

12

English Liberties :
Or, The
Free-Born SUBJECT's
Inheritance,

CONTAINING

- I. *MAGNACHARTA*, The *Petition of Right*, The *Habeas Corpus Act*; and divers other most *Useful Statutes*: With Large *COMMENTS* upon each of them.
- II. The Proceedings in *Appeals of Murder*; The Work and Power of *Parliament's*; The *Qualifications* necessary for such as should be chosen to that great Trust. Plain Directions for all Persons concerned in *Ecclesiastical Courts*; and how to prevent or take off the Writ *De Excommunicato Capiendo*. As also the Oath and Duty of Grand and Petty Juries.
- III. All the Laws against *Conventicles* and *Protestant Dissenters* with Notes, and Directions both to *Constables* and others concern'd, thereupon; And an *Abstract* of all the Laws against *Papists*.

L O N D O N :

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English Language

Of the

Free-Born SUBJECTS

Indifferent

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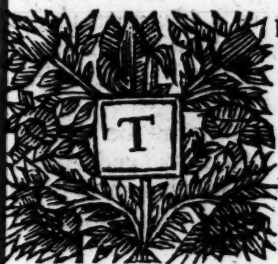
Lord Chief Justice North, and all

the Judges then in England.

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THE PROEM.



THE Constitution of our English Government (the best in the World) is no Arbitrary *Tyranny*, like the Turkish Grand Seignior's, or the French Kings, whose Wills (or rather *Lusts*) dispose of the Lives and Fortunes of their unhappy Subjects ; Nor an *Oligarchy*, where the great ones (like Fish in the Ocean) prey upon, and live by devouring the *lesser* at their pleasure : Nor yet a *Democracy* or popular State, much less an *Anarchy*, where all confusedly are *hail fellows well met*. But a most excellently mixt or *qualified Monarchy*, where the King is vested with large *Prerogatives* sufficient to support *Majesty* ; and restrain'd only from Power of doing himself and his People *harm*, (which would be contrary to the very end of all Government, and is properly rather *weakness* than power) the *Nobility* adorn'd with Priviledges to be a *Screen* to *Majesty*, and a refreshing Shade to their

Inferiours, and the *Commonalty* too, so Guarded in their Persons and Properties by the fence of Law, as renders them *Free-men*, not Slaves.

In *France* and other Nations the meer Will of the Prince is *Law*, his Word takes off any mans *Head*, imposes *Taxes*, or seizes any mans *Estate*, when, how, and as often as he lists; and if one be *Accused*, or but so much as suspected of any Crime, he may either presently Execute him, or Banish, or Imprison him at pleasure; or if he will be so Gracious as to proceed by Form of their Laws, if any two *Villains* will but swear against the poor Party, his Life is gone. Nay, if there be no *Witnesses*, yet he may be put to the *Rack*, the Tortures whereof make many an *Innocent* Person confess himself Guilty, and then with seeming *Justice* he is Executed; or if he prove so stout as in Torments to deny the Fact, yet he comes off with *Disjoynted Bones*, and such Weakness as renders his Life a Burthen to him ever after.

But in *England*, the Law is both the *Measure* and the *Bond* of every Subjects Duty and Allegiance, each man having a fixed Fundamental Right born with him, as to *Freedom of his Person*, and *Property in his Estate*, which he cannot be deprived of, but either by his consent, or some Crime, for which the Law has Impos'd such a Penalty or Forfeiture. For all our Kings take a solemn Oath,

- (1) At their Coronation, to Observe and cause the Laws to be kept, (1) See Book of Oaths, p. 1. & 3. which was done by our present most Gracious Sovereign: (2) *Bakers Cron.* fol. 741. Likewise all our Judges take an Oath, wherein amongst other points, they swear, (3) *Book of Oaths* p. 216. To do equal Law and Right to all the Kings Subjects, Rich and Poor, and not to delay any Person of Common Right for the Letters of the King,

or of any other Person, or for any other Cause; But if any such Letters come to them, they shall proceed to do the Law, the same Letters notwithstanding: Therefore saith Fortescue (who was first Chief Justice, and afterwards Lord Chancellor to King Henry the 6th.) in his Book *de Laudibus Legum Angliæ*, cap. 9. *Non potest Rex Angliæ, &c. The King of England cannot alter nor change the Laws of his Realm at his pleasure; For why, he Governeth his People by Power not only Royal, but also Politick; If his Power over them were only Regal, then he might change the Laws of his Realm, and charge his Subjects with Tallage and other Burthens without their consent, and such is the Dominion that the Civil Laws purport, when they cry, Quod principi placuit Legis habet Vigorem, The Princes pleasure has the force of a Law. But from this much differeth the power of a King, whose Government over his People is Politick; For he can neither change Laws without the consent of his Subjects, nor yet charge them with Impositions against their Wills; Wherefore his People do frankly and freely enjoy and occupy their own Goods, being Ruled by such Laws as they themselves desire. Thus Fortescue; with whom Accords Bracton a Reverend Judge and Law-Author in the Reign of King Henry the third, saying—*Rex in Regno suo superiores habet Deum & Legem; The King in his Realm hath two Superiors, God and the Law*; for he is under the Directive, though not Coercive Power of the Law; and on the same Score Judge Vaughan speaking of our Fundamental Laws which are Coeval with the Government, sticks not to say, *The Laws of England were never the Dictates of any Conquerors Sword, or the Placita or good Will and pleasure of any King of this Nation, or to speak Impartially and Freely, the Results of any Parliament that ever sat in this Land.* And the late cited Fortescue, in his*

13 chap. has a very apt similitude to Illustrate and Demonstrate this, *The Law*, (says he) *taketh its name*, a *Ligando*, to bind, for thereby the *Politick Body* is knit and preserv'd together, as the *Natural Body* by the *Bones and Sinews*, and *Members*, which retain every one their proper *Functions*; And as the *Head of a Body Natural* cannot change his *Sinews*, nor cannot deny or withhold from his inferiour *Members*, their peculiar *Powers* and several nourishments of *Blood and Spirits*, no more can a *King*, which is the *Head of a Body Politick*, change the *Laws* of that *Body*, nor withdraw from his *People* their proper *Substance*, against their *Wills and Consents* in that behalf.

'Tis true, the *Law* it self affirms, *The King can do no wrong*, which proceeds not only from a presumption, that so Excellent a *Person will do none*: But also because he Acts nothing but by *Ministers*, which (from the lowest to the highest) are answerable for their doings, so that if a *King in Passion* should command *A.* to kill *B.* without process of *Law*, *A.* may yet be prosecuted by *Indictment*, or upon an *Appeal*, (where no *Royal Pardon* is allowable) and must for the same be Executed, such Command notwithstanding.

This Original happy frame of Government is truly and properly call'd an *English mans Liberty*, a Priviledge not to exempt from the *Law*, but to be freed in *Person and Estate*, from *Arbitrary Violence and Oppression*; A greater *Inheritance* (saith Judge *Cook*) is deriv'd to every one of us from our *Laws* than from our *Parents*; For without the former, what would the latter signifie? And this Birth-right of *English-men*, shines most conspicuously in two things: 1. *Parliaments.* 2. *Juries.*

By the first the Subject has a share by his chosen Representatives in the *Legislative* (or *Law-making*) Power, for no new *Laws* bind the *People* of

of *England*, but such as are by common consent agreed on in that great Council.

By the second, He has a share in the *Executive* part of the Law, no Causes being Tryed, nor any man Adjudged to lose Life, Member or Estate, but upon the *Verdict* of his Peers (or Equals) his Neighbours, and of his own Condition: these two Grand Pillars of English Liberty, are the Fundamental Vital Priviledges, whereby we have been, and are preserv'd more free and happy than any other People in the World, and (we trust) shall ever continue so; For whoever shall design to Impair, Pervert, or Undermine either of these, do strike at the very Constitution of our Government, and ought to be Prosecuted and Punished with the utmost Zeal and Rigour. To cut down the Banks, and let in the Sea, or to Poyson all the Springs and Rivers in the Kingdom, could not be a greater Mischief; for this would only affect the present Age, but the other will Ruine and Enslave all our Posterity.

But besides these General *Paramount Priviledges* which the English are Estated in by the Original Constitution of their Government, there are others more particularly declared and expressed in diverse *Acts of Parliament*, of which several of the most remarkable and usefull are here presented at large to the Reader, with some *Notes* thereupon, for his better understanding of the same.

MAGNA CHARTA, or the Great Charter made in the ninth Year of King *Henry* the Third, and confirmed by King *Edward* the First, in the eight and twentieth Year of his Reign.

EDward, *By the Grace of God, King of England, Lord of Ireland, and Duke of Guyan: To all Arch-Bishops, Bishops, &c. We have seen the great Charter of the Lord Henry, sometimes King of England, our Father, of the Liberties of England, in these Words.*

Henry, *By the Grace of God, King of England, Lord of Ireland, Duke of Normandy and Guyan, and Earl of Anjou; To all Arch-Bishops, Bishops, Abbots, Priors, Earls, Barons, Sheriffs, Provofts, Officers, and to all Bayliffs, and other our Faithful Subjects, which shall see this present Charter, Greeting. Know you, that We unto the Honour of Almighty God, and for the Salvation of the Souls of our Progenitors and Successors, Kings of England, to the Advancement of Holy Church, and Amendment of our Realm, of our meer and free Will, have Given and Granted to all Arch-Bishops, Bishops, Abbots, Priors, Earls, Barons, and to all Free-men of this our Realm, these Liberties following, to be kept in our Kingdom of England for ever.*

CHAP. I.

A Confirmation of Liberties.

First, We have granted to God, and by this our present Charter have confirm'd for Us & our Heirs for ever; That the Church of England shall be free, and

and shall have all her whole Rights and Liberties Inviolable. (2.) We have granted also, and given to all the Free-men of our Realm. for Us and our Heirs for ever, these Liberties under-written, to have and to hold to them and their Heirs for ever.

CHAP. II.

The Relief of the Kings Tenant of full Age.

IF any of our Earls or Barons, or any other which Hold of Us in Chief by Knights Service, dye, and at the time of his Death, his Heir be of full Age, and oweth to us Relief, he shall have his Inheritance by the old Relief, that is to say, the Heir or Heirs of an Earl, for a whole Earldom, by one hundred pound: the Heir or Heirs of a Baron for an whole Barony, by one hundred marks: the Heir or Heirs of a Knight, for one whole Knights Fee, one hundred shillings at the most. And he that hath less shall give less, according to the old Custom of the Fees.

CHAP. III.

The Wardship of an Heir within Age;

The Heir a Knight.

BUt if the Heir of any such be within Age, his Lord shall not have the Ward of him, nor of his Land, before that he hath taken of him Homage. (2.) And after that such an Heir hath been in Ward (when he is come to full Age) that is to say, to the Age of one and twenty Years, he shall have his Inheritance without Relief, and without time; so that if such an Heir being within Age be made Knight, yet nevertheless his Land shall remain in the keeping of his Lord unto the Term aforesaid.

CHAP. IV.

No waft shall be made by a Guardian in Wards Lands.

THE Keeper of the Land of such an Heir being within Age, shall not take of the Lands of the Heir but reasonable Issues, reasonable Customs,

and Reasonable Services, and that without destruction, and waste of his Men and his Goods. (2.) And if we commit the Custody of any such Land to the Sheriff, or to any other, which is answerable unto us for the Issues of the same Land, and he make destruction or waste of those things that he hath in Custody, we will take of him amends and recompence therefore. (3.) And the Land shall be committed to two lawful and discreet men of that Fee, which shall answer unto Us for the Issues of the same Land, or unto him whom we will Assign. (4.) And if we give or sell to any man the Custody of any such Land, and he therein do make destruction or waste, he shall lose the same Custody. And it shall be Assigned to two lawful and discreet men of that Fee, which also in like manner shall be answerable to Us, as afore is said.

CHAP. V.

Guardians shall maintain the Inheritance of their Wards: And of Bishopricks.

THe Keeper, so long as he hath the Custody of the Land of such an Heir shall keep up the Houses, Parks, Warrens, Ponds, Mills, and other things pertaining to the same Land, with the Issues of the said Land: And he shall deliver to the Heir, when he cometh to his full Age, all his Land, stored with Ploughs and all other things, at the least as he receiv'd it. All these things shall be observed in the Custody of Arch-Bishopricks, Bishopricks, Abbeys, Priories, Churches and Dignities vacant, which appertain to Us: Except this, that such Custody shall not be sold.

CHAP. VI.

Heirs shall be Married without Disparagement.

HEirs shall be Married without Disparagement.

CHAP.

CHAP. VII.

A Widow shall have her Marriage, Inheritance, and Quarentine. The Kings Widow.

A Widow after the Death of her Husband, Incontinent and without any difficulty, shall have her Marriage, and her Inheritance. (2.) And shall give nothing for her Dower, her Marriage, or her Inheritance, which her Husband and She held the day of the Death of her Husband. (3.) And She shall tarry in the chief House of her Husband, by forty days after the Death of her Husband, within which days her Dower shall be Assigned her, (if it were not Assigned her before) or that the House be a Castle. (4.) And if she depart from the Castle, then a competent House shall be forthwith provided for her, in the which She may honestly dwell, until her Dower be to her Assigned, as it is aforesaid; And She shall have in the mean-time her reasonable Estovers of the Common. (5.) And for her Dower shall be Assigned unto her the third part of all the Lands of her Husband, which were his during Coverture, except She were endowed of less at the Church door. (6.) No Widow shall be distrained to Marry her self: Nevertheless She shall find surety, that She shall not Marry without our License and Assent (if She hold of Us) nor without the Assent of the Lord, if She hold of another.

CHAP. VIII.

How Sureties shall be charged to the King.

WE or our Bailiffs, shall not seize any Land or Rent for any Debt, as long as the present Goods and Chattels of the Debtor do suffice to pay the Debt, and the Debtor himself be ready to satisfy therefore. (2.) Neither shall the Pledges of the Debtor be distrained, as long as the principal Debtor is sufficient for the payment of the Debt. (3.) And if the principal Debtor fail in the payment of the Debt, having nothing wherewith to

Pay, or will not pay where he is able, the pledges shall answer for the Debt. (4.) And if they will, they shall have the Lands and Rents of the Debtor untill they be satisfied of that which they before payed for him, except that the Debtor can shew himself to be acquitted against the said Sureties.

CHAP. IX.

The Liberties of London, and other Cities and Towns Confirmed.

THe City of London shall have all the old Liberties and Customs which it hath been used to have. Moreover, we Will and Grant, that all other Cities and Borroughs, Towns, and the Barons of the five Ports, and all other Ports, shall have all their Liberties and free Customs.

CHAP. X.

None shall distrain for more Service than is due.

NO man shall be distrained to do more Service for a Knights Fee, nor for any Freeholder, than therefore is due.

CHAP. XI.

Common-Pleas, shall not follow the Kings Court.

Common-Pleas shall not follow our Court, but shall be holden in some place certain.

CHAP. XII.

Where, and before whom Assizes shall be taken.

Adjournment for Difficulty.

Assizes of Novel Disseisin and of Mortdancestor, shall not be taken but in the Shires, and after this manner: If we be out of this Realm, our Chief Justicers shall send our Justicers through every County once in the Year; Which, with the Knights of the Shire, shall take the said Assizes in those Counties. (2.) And those things that at the coming of our foresaid Justicers, being sent to take those Assizes in the Counties, cannot be determined, shall be ended by them in some other place in their Circuit. (3.) And those things which for difficulty

ficulty of some Articles cannot be determined by them, shall be referred to our Justicers of the Bench, and there shall be ended.

CHAP. XIII.

Affizes of Darrein Presentment.

Affizes of Darrein Presentment, shall be always taken before our Justicers of the Bench, and there shall be determined.

CHAP. XIV.

How men of all sorts shall be amerced, and by whom.

A Free-man shall not be amerced for a small fault, but after the manner of the fault. And for a great fault after the greatness thereof, saving to him his contenment. (2.) And a Merchant likewise, saving to him his Merchandize. (3.) And any others Villain than ours shall be likewise amerced, saving his Wainage, if he fall into our mercy. (4.) And none of the said amerciements shall be Assessed, but by the Oath of honest and lawful men of the Vicinage. (5.) Earls and Barons, shall not be amerced, but by their Peers, and after the manner of their offence. (6.) No man of the Church shall be amerced after the quantity of his Spiritual Benefice, but after his Lay-tenement, and after the quantity of his offence.

CHAP. XV.

Making of Bridges and Banks.

NO Town nor Freeman shall be distrained to make Bridges nor Banks, but such as of old time, and of right have been accustomed to make them in the time of King Henry our Grandfather.

CHAP. XVI.

Defending of Banks.

NO Banks shall be defended from henceforth, but such as were in defence in the time of King Henry our Grandfather, by the same places, and the same bounds as they were wont to be in his time.

CHAP.

CHAP. XVII.

Holding Pleas of the Crown.

NO Sheriff, Constable, Escheator, Coroner; nor any other our Bayliffs, shall hold Pleas of our Crown.

CHAP. XVIII.

The Kings Debtor dying, the King shall be first paid.

IF any that holdeth of Us Lay-fee do dye, and our Sheriff or Bayliff do shew our Letters Patents of our Summons for Debt, which the Dead man did owe to us: It shall be lawful to our Sheriff or Bayliff, to Attach and Inroll all the Goods and Chattels of the Dead, being found in the said Fee, to the value of the same Debt, by the sight and testimony of lawful men; So that nothing thereof be taken away, until we be clearly paid off the Debt. (2.) And the residue shall remain to the Executors, to perform the Testament of the Dead. (3.) And if nothing be owing to Us, all the Chattels shall goe to the use of the Dead (saving to his Wife and Children the Reasonable parts.)

CHAP. XIX.

Parveyance for a Castle.

NO Constable, nor his Bayliff shall take Corn or other Chattels of any man, if the man be not of the Town where the Castle is, but he shall forthwith pay for the same, unless that the Will of the Seller was to respite the payment. (2.) And if he be of the same Town, the price shall be paid unto him within forty days.

CHAP. XX.

Doing of Castle Ward.

NO Constable shall distrain any Knight for to give money for keeping of his Castle, if he himself will do it in his proper person, or cause it to be done by another sufficient man, if he may not do it himself for a reasonable cause. (2.) And if we do lead or send him in an Army, he shall be

be free from Castle-ward for the time that he shall be with Us in Fee in our Host, for the which he hath done Service in our Wars.

CHAP. XXI.

Taking of Horses, Carts, and Woods.

NO Sheriff nor Bayliff of ours, nor any other, shall take the Horses or Carts of any man to make Carriage, except he pay the old price limited, that is to say, for Carriage with two Horse, 10 d. a day, for three Horse 14 d. a day. (2.) No demesne Cart of any spiritual Person or Knight, or any Lord, shall be taken by our Bayliffs. (3.) Nor we, nor our Bailiffs, nor any other shall take any mans Wood for our Castles, or other our Necessaries to be done, but by the License of him whose the Wood is.

CHAP. XXII.

How long Felons Lands shall be holden by the King.

WE will not hold the Lands of them that be be Convict of Felony but one Year and one day, and then those Lands shall be delivered to the Lords of the Fee.

CHAP. XXIII.

In what place Weirs shall be put down.

ALL Weirs from henceforth shall be utterly put down by Thames and Medway, and through all England, but only by the Sea-Co's.

CHAP. XXIV.

In what Case a Præcipe in Capite, is not grantable.

THe Writ that is called *Præcipe in Capite*, shall be from henceforth granted to no Person of any Free-hold, whereby any Free-man may lose his Court.

CHAP. XXV.

There shall be but one Measure throughout the Realm.

One Measure of Wine shall be through our Realm, and one Measure of Ale, and Measure of Corn, that is to say, the Quarter of London. (2.) And.

(2.) And one breadth of died Cloath, Ruffets, and Haberjects, that is to say, two yards within the Lists. (3.) And it shall be of Weights as it is of Measures.

CHAP. XXVI.

Inquisition of Life and Member.

Nothing from henceforth shall be given for a Writ of Inquisition, nor taken of him that prayeth Inquisition of Life or of Member, but it shall be granted freely, and not denied.

CHAP. XXVII.

Tenure of the King, in Socage, and of another by Knights Service. Petit Serjeantry.

IF any do hold of Us by Fee-farm, or by Socage, or Burgage, & he holdeth Lands of another by Knights Service, we will not have the Custody of his Heir, nor of his Land, which is holden of the Fee of another, by reason of that Fee-farm, Socage or Burgage.

(2.) Neither will we have the Custody of such Fee-farm, or Socage or Burgage, except Knights Service be due unto Us out of the same Fee-farm.

(4.) We will not have the Custody of the Heir, or of any Land, by occasion of any Petit Serjeantry that any man holdeth of Us by Service, to pay a Knife, an Arrow, or the like.

CHAP. XXVIII.

Wager of Law shall not be without Witness.

NO Bayliff from henceforth, shall put any man to his open Law, nor to an Oath, upon his own bare saying, without faithful Witnesses brought in for the same.

CHAP. XXIX.

None shall be Condemned without Tryal. Justice shall not be sold or deferred.

NO Freeman shall be taken, or Imprisoned, or be disseised of his Free-hold, or Liberties, or free Customs, or be Outlawed or Exiled, or any otherwise destroyed, nor we will not pass upon him,
nor

nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. (2.) We will sell to no man, we will not deny or defer to any man either Justice or Right.

CHAP. XXX.

*Merchants, Strangers, coming into this Realm,
shall be well used.*

ALL Merchants (if they were not openly prohibited before) shall have their safe and sure Conduct to depart out of England, to come into England, to tarry in and go through England, as well by Land as by Sea, to buy and sell without any manner of Evil Tools, by the old and rightful Customs, except in time of War. (2.) And if they be of a Land making War against Us, and be found in our Realm at the beginning of the Wars, they shall be Attached without harm of Body and Goods, until it be known unto us, or our Chief Justice, how our Merchants be intreated there in the Land making War against Us. (3.) And if our Merchants be well intreated there, theirs shall be likewise with Us.

CHAP. XXXI.

*Tenure of a Barony, coming into the Kings
Hand by Eschete.*

IF any man hold of any Eschete, as of the Honour of Wallingford, Nottingham, Boloin, or of any other Eschetes which be in our hand, and are Baronies, and dye, his Heir shall give none other Relief, nor do none other Service to Us than he should to the Baron, if it were in the Barons hand. (2.) And we in the same wise should hold it as the Baron held it, neither shall we have by occasion of any Baron or Eschete, any Etchete or Keeping of any of our men, unless he that held the Barrony or Eschete, otherwise held of us in Chief.

CHAP.

CHAP. XXXII.

*Lands shall not be aliened to the prejudice
of the Lords Service.*

NO Freeman, from henceforth shall give or sell any more of his Land, but so that of the Residue of the Lands, the Lord of the Fee may have the Services due to him, which belongeth to the Fee.

CHAP. XXXIII.

*Patrons of Abbies, shall have the Custody of
them in the time of Vacation.*

ALL Patrons of Abbies, which have the Kings Charter of *England*, of Advowson, or have old tenure or possession in the same, shall have the Custody of them when they fall void, as it hath been accustomed, and as it is afore declared.

CHAP. XXXIV.

*In what only Case a Woman shall have an
Appeal of Death.*

NO man shall be taken or Imprisoned upon the Appeal of a Woman, for the Death of any other than of her Husband.

CHAP. XXXV.

*At what time shall be kept a Countrey Court,
Sheriffs turn, and a Leet:*

NO Countrey from henceforth shall be holden, but from month to month; and where greater time hath been used, there shall be greater. (2.) Nor any Sheriff or his Bayliff shall keep his Turn in the Hundred, but twice in the Year: and no where but in due place and accustomed, that is to say, once after *Easter*, and again after the Feast of Saint *Michael*. (3.) And the view of *Frank-pledge* shall be likewise at the Feast of Saint *Michael* without occasion. So that every man have his Liberties which he had, or used to have in the time of King *Henry* our Grandfather, or which he hath purchased since. (4.) The view of *Frank-pledge* shall be so done, that our peace may be kept. (5.) And that:

that the Tything be wholly kept as it hath been accustomed. (6.) And that the Sheriff seek no occasions, and that he be content with so much as the Sheriff was wont to have for his view-making in the time of King *Henry* our Grandfather.

CHAP. XXXVI.

No Land shall be given in Mortmain.

IT shall not be lawful from henceforth to any one to give his Lands to any Religious House, and to take the same Land again to hold of the same House. Nor shall it be lawful to any House of Religion to take the Lands of any, and to Lease the same to him of whom he received it: If any from henceforth give his Lands to any Religious House, and thereupon be Convict, the Gift shall be utterly void, and the Land shall Accrue to the Lord of the Fee.

CHAP. XXXVII.

A Subsidy in respect of this Charter, and the Charter of the Forrest, granted to the King.

Escuage from henceforth shall be taken, like as it was wont to be in the time of King *Henry* our Grandfather, reserving to all *Archbishops, Bishops, Abbots, Priors, Templers, Hospitallers, Earls, Barons*, and all persons as well Spiritual as Temporal, all their free Liberties and free Customs which they have had in time passed; (2.) And all these Customs and Liberties aforesaid, which we have granted to be holden within this our Realm, as much as appertaineth to us and our Heirs, we shall observe. (3.) And all men of this our Realm, as well Spiritual as Temporal (as much as in them is) shall observe the same against all persons in likewise. (4.) And for this our Gift and Grant of these Liberties, and of other contained in our Charter of liberties of our Forest, the *Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Freeholders*, and other our Subjects, have given unto us the fifteenth part of

of all their movables. (5.) And we have granted unto them on the other part, that neither we nor our Heirs shall procure or do any thing, whereby the Liberties in this Charter contained, shall be Infringed or Broken. (6.) And if any thing be procured, by any Person, contrary to the premisses, it shall be had of no force nor effect. These being Witnesses, Lord B. Arch-bishop of *Canterbury*, E. Bishop of *London*, &c.

We, Ratifying and approving these Gifts and Grants afore said, confirm and make strong all the same for Us and our Heirs perpetually; And by the Tenour of these presents, do renew the same, Willing and granting for Us and our Heirs, that this Charter, and all and singular his Articles for ever, shall be stedfastly, Firmly, and Inviolably observed. And if any Article in the same Charter contained, yet hitherto peradventure hath not been kept, We will, and by Authority Royal Command from henceforth firmly they be observed. In Witness whereof we have caused these our Letters Patents to be made. *T. Edward* our Son at *Westminster*, the twenty eighth day of *March*, in the twenty eighth year of our Reign.

Notes on *Magna Charta*.

THis Excellent Law holds the first place in our Statute Books, for though there were no doubt many Acts of Parliament long before this, yet they are not now Extant: 'tis called *Magna Charta*, or the Great Charter, not in Respect of its Bulk, but in Regard of the great Importance and weight of the matters therein contained; it is also styled *Charta Libertatum Regni*, the Charter of the Liberties of the Kingdom, and upon great reason (saith Cook in his Proem) is it so called from the effect, *Quia liberos facit*, because it makes and preserves the people free.

Though it run in the stile of the King as a Charter, yet (as my Lord Cook well observes on the 38 Chapter) it appears to have passed in Parliament, for there was then a Fifteenth granted to the King, by the Bishops, Earls, Barons, Free-tenants and people, which could not be but in Parliament, nor was it unusual in those times to have Acts of Parliament, in a Form of a Charter: as you may read in the Princes case, *Co. Rep. L. 8.*

Likewise though it be said here, that the King hath given and granted these Liberties, yet they must not be understood as meer *Emanations* of Royal Favour, or new Bounties granted, which the people could not justly challenge, or had not a Right unto before; For the Lord Cook at divers places asserts, and all Lawyers know, that this Charter is for the most part only *Declaratory* of the principal grounds of the Fundamental Laws and Liberties of England; no new freedom is hereby granted, but a Restitution of such as lawfully they had before, and to free them of what had been usurped and encroached upon them by any power whatsoever; and therefore you may

may see this Charter often mentions *Sua Jura*, their Rights, and *Liberatae suae*, their Liberties, which shews they had them before, and that the same now were Confirmed.

As to the occasion of this Charter, it must be noted, that our Ancestors the Saxons had with a most equal poize and temperament, very wisely contriv'd their Government, and made excellent provisions for their Liberties, and to preserve the People from oppression, and when *William the Norman* made himself Master of the Land, though he be commonly called the *Conquerour*, yet in truth he was not so, and I have known several Judges that would Reprehend any Gentleman at the Bar that casually gave him that Title; For though he killed *Harold* the Usurper, and Routed his Army, yet he pretended a right to the Kingdom, and was admitted by Compact, and did take an Oath to observe the *Laws and Customs*.

But the truth is, he did not perform that Oath so as he ought to have done; and his Successors *William Rufus*, King *Stephen*, *Henry the First*, and *Richard* likewise, made frequent *Encroachments* upon the Liberties of their People, but especially King *John* made use of so many Illegal Devices to drain them of Money, that wearied with intollerable oppressions they resolved to oblige the King to grant them their Liberties, and to promise the same should be observed, which King *John* did in *Running-mead* between *Stains* and *Windsor*, by two Charters, one called *Charta Libertatum*, The Charter of Liberties (the Form of which you may read in *Math. Paris*, *Fol. 246.* and is in effect the same with this here recited) the other the Charter of the Forreſt, Copies of which he sent into every County, and commanded the Sheriffs, &c. to see them fulfilled.

But by ill Council he quickly after began to violate them as much as ever, whereupon Disturbances and great

great miseries arose both to himself and the Realm.

The Son and Successor of this King *John* was *Henry the Third*, who in the 19th Year of his Reign, Renewed and Confirmed the said Charters, but within two Years after Cancelled them by the pernicious advice of his Favourites, and particularly *Hubert de Burgh* whom he had made Lord Chief Justice; one that in former times had been a great Lover of his Countrey, and a well deserving Patriot, as well as learned in the Laws, but now to make *this* a step to his Ambition (which ever Rideth without Reins) persuaded and humored the King that he might avoid the Charters of his Father King *John* by Dureſſe, and his own Great Charter, and *Charta de Foresta* also, for that he was within Age when he granted the same; whereupon the King in the eleventh Year of his Reign, being then of full Age, got one of the great Charters, and of the Forrest, into his Hands, and by the Council principally of this *Hubert* his Chief Justice, at a Council holden at *Oxford*, unjustly Cancelled both the said Charters, (notwithstanding the said *Hubert de Burgh* was the premier Witness of all the Temporal Lords to both the said Charters) whereupon he became in high Favour with the King, insomuch that he was soon after (*viz.* the 10th of December in the 13th Year of that King) Created (to the highest Dignity that in those times a Subject had) to be an Earl, *viz.* of *Kent*. But soon after (for Flatterers and Humorists have no sure Foundation) he fell into the Kings heavy Indignation, and after many fearful and miserable Troubles, he was justly, and according to Law Sentenced by his Peers in an open Parliament, and justly Degraded of that Dignity which he unjustly had obtained by his Council for Cancelling of *Magna Charta*, and *Charta de Foresta*.

In the 5th. Chap. of this great Charter, all the Ancient Liberties and Customs of *London*, are Confirmed

firmed and preserved, which is likewise done by divers other Statutes, as 14 *Edw. 3. Cap. 2. &c.*

The 29 *chapt.* NO FREE-MAN SHALL BE TAKEN, &c. Deserves to be written in Letters of Gold, and I have often wondered the words thereof are not Inscribed in Capitals on all our Courts of Judicature, *Town-Halls*, and most publick Edifices; they are the Elixir of our *English* Freedoms, the Storehouse of all our Liberties. And because my Lord *Cook* in the second part of his *Institutes*, has many excellent Observations, I shall here Recite his very words. This Chapter containeth nine several Branches :

1. *That no man be taken or Imprisoned, but per Legem terræ*, that is, by the *Common Law*, *Statute-Law*, or *Custom of England* : For these words, *per Legem terræ*, being towards the end of this Chapter, do Refer to all the precedent matters in this Chapter ; and this hath the first place, because the *Liberty of a mans person* is more pretious to him than all the rest that follow, and therefore it is great reason that he should by *Law* be *Relieved* therein, if he be wronged, as hereafter shall be shewed.

2. *No man shall be Disseised*, that is, put out of Seisin, or dispossessed of his Free-hold, that is, Lands or Liveliness, or of his Liberties or free Customs, that is, of such Franchises and Freedoms, and free Customs as belong to him, by his Free Birth-Right, unless it be by the *lawful Judgment*, that is, *Verdict* of his equals, (that is, of men of his own Condition) or by the *Law of the Land*, that is, (to speak it once for all) by the due Course and process of Law.

3. *No man shall be Outlawed*, made an *Exlex*, put out of the Law, that is, deprived of the Benefit of the Law, unless he be *Outlawed according to the Law of the Land*.

4. *No man shall be Exiled or Banished* out of his Countrey, that is, *Nemo perdet patriam*, no man shall

shall lose his Countrey, unless he be Exiled according to the Law of the Land.

5. No man shall in any sort be destroyed (*Destruere id est quod prius structum & factum fuit, penitus Exertere & Diruere,*) unless it be by the Verdict of his Equals, or according to the Law of the Land.

6. No man shall be Condemned at the Kings Suit, either before the King in his Bench, where the Pleas are *Coram Rege* (and so are the words, *Nec super eum ibimus* to be understood ;) nor before any other Commissioner or Judge whatsoever, and so are the words, *Nec super eum mittimus*, to be understood, but by the Judgment of his Peers, that is, Equals, or according to the Law of the Land.

7. We shall sell to no man Justice or Right.

8. We shall deny to no man Justice or Right.

9. We shall defer to no man Justice or Right.

Each of these we shall briefly explain.

1. No man shall be taken, (that is) Restrained of Liberty by Petition or Suggestion to the King or his Council, unless it be by Indictment or Presentment of good and lawful men, where such deeds be done. This Branch and divers other parts of this Act have been notably explained and Construed by divers Acts of Parliament, several of which you will find Recited hereafter in this Book.

2. No man shall be Disseised, &c. Hereby is intended that Lands, Tenements, Goods and Chattels, shall not be seised into the Kings Hands contrary to this great Charter, and the Law of the Land, nor any man shall be disseised of his Lands or Tenements, or dispossessed of his Goods or Chattels contrary to the Law of the Land.

A Custom was alleadged in the Town of C. that if the Tenant cease by two years, that the Lord should enter into the Freehold of the Tenant, and hold the same until he were satisfied of the Arrearages : it was adjudged a Custom against the Law of the

the Land, to enter into a Mans Freehold in that case, without Action or Answer.

King Henry 6. Granted to the Corporation of Diers within London, power to search, &c. And if they found any Cloath died with Log-Wood, that the Cloath should be Forfeited : And it was adjudged, that this Charter concerning the Forfeiture was against the Law of the Land, and this Statute ; For no Forfeiture can grow by Letters Patents.

No Man ought to be put from his Livelihood without Answer.

3. *No Man Outlawed*] That is, barred to have the benefit of the Law. And note, to this word *Outlawed*, these words, *Unless by the Law of the Land*, do Referr. [*Of his Liberties*] This word hath three Significations :

1. As it hath been said, it signifieth the *Laws* of the Realm, in which respect this Charter is called *Charta Libertatum*, as aforesaid.

2. It signifieth the *Freedom* the *Subjects* of *England* have : for example, the Company of *Merchant-Taylors* of *England*, having power by their Charter to make Ordinances, made an Ordinance that every Brother of the same Society should put the one half of his Cloaths to be dressed by some Cloath-Workers Free of the same Company, upon pain to Forfeit 10 s. &c. And it was adjudged that this Ordinance was against Law, because it was against the Liberty of the Subject, for every Subject hath freedom to put his Cloaths to be dressed by whom he will, & sic de similibus. And so it is, if such or the like grant had been made by his Letters Patents.

3. *Liberties* signifie the *Franchises* and *Priviledges* which the Subjects have of the gift of the King, as the Goods and Chattels of *Felons*, *Out-laws* and the like ; or which the Subject claims by Prescription, as *wreck*, *waife*, *straie*, and the like.

So likewise and for the same reason, if a Grant be made to any Man to have the Sole making of *Car ds*, or the Sole dealing with any other Trade, that Grant is against the Liberty and Freedom of the Subject, that before did or lawfully might have used that Trade, and consequently against this great Charter.

Generally all Monopolies are against this great Charter, because they are against the Liberty and Freedom of the Subject, and against the Law of the Land.

4. *No Man Exiled*, that is Banisht, or forced to depart or stay out of *England* without his Consent. By the Law of the Land, no Man can be *Exiled* or Banished out of his Native Country, but either by *Authority of Parliament*, or in Case of Abjuration for Felony by the Common Law; and so when our Books, or any Record, speak of *Exile*, or Banishment, other than in case of Abjuration, it is to be intended to be done by *Authority of Parliament*, as *Belknap* and other Judges, &c. Banished into *Ireland*, in the Reign of *Rich.* the Second.

This is a Beneficial Law, and is Construed benignly; And therefore the King cannot send any Subject of *England* against his will to serve him out of this Realm, for that should be an Exile, and he should *perdere Patriam*: No, he cannot be sent against his will into *Ireland*, to serve the King or his Deputy there, because it is out of the Realm of *England*: For if the King might send him out of this Realm to any place, then under pretence of Service, as Ambassador or the like, he might send him into the furthest part of the World, which being an Exile, is prohibited by this Act.

5. *No Man destroyed*—That is, forejudged of Life or Limb, or put to Torture or Death, every oppression against Law by colour of any usurped Authority is a kind of destruction. And the words *Ali-*

quo modo (any otherwise) are added to this Verb *destroyed*, and to no other Verb in this Chapter, and therefore all things by any manner of means tending to destruction are prohibited; as if a Man be accused or Indicted of Treason or Felony, his Lands or Goods cannot be granted to any, no not so much as by promise, nor any of his Lands or Goods seized into the Kings hands before he is Attainted; For when a Subject obtaineth a promise of the forfeiture, many times undue means and more violent prosecution is used for private Lucre, tending to destruction, than the quiet and just proceeding of the Law would permit, and the party ought to live of his own until Attainder.

6. By *Lawful Judgment of his Peers*,] That is by his *Equals*, Men of his own Rank and Condition. The general division of Persons by the Law of *England*, is, either *one that is Noble*, and in respect of his Nobility of the Lords House of Parliament, or *one of the Commons*, and in respect thereof, of the House of Commons in Parliament. And as there be divers degrees of Nobility, as Dukes, Marquesses, Earls, Viscounts, and Barons, and yet all of them are comprehended under this word *Peers*, and are Peers of the Realm; so of the Commons, there be Knights, Esquires, Gentlemen, Citizens; and Yeomen, and yet all of them of the Commons of the Realm. And as every of the Nobles is one a Peer to another, though he be of a several degree, so it is of the Commons; and as it hath been said of Men, so doth it hold of Noble Women, either by Birth or Marriage.

And forasmuch, as this Judgment by Peers is called *Lawful*, it shews the Antiquity of this manner of Trial: It was, the ancient, accustomed, Legal Course long before this Charter.

Or by the *Law of the Land*.] That is, by due process of Law, for so the words are expressly expounded

ed by the Stat. of 37 Edw. 3. chap. 8. And these words are specially to be referred to those foregoing, to whom they relate. As none shall be condemn'd without a lawful Trial by his Peers, so none shall be taken, Imprison'd, or put out of his Free-hold, without due process of the Law, that is by the Indictment or Presentment of good and lawful Men of the place, in due manner, or by Writ Original of the Common-Law. p

Now, seeing that no Man can be Taken, Arrested, Attached, or Imprisoned, but by due process of Law, and according to the Law of the Land, these conclusions hereupon do follow.

1. That the Person or Persons which commit any, must have lawful Authority.

2. It is necessary that the Warrant or Mittimus be lawful, and that must be in Writing under his Hand and Seal.

3. The Cause must be contained in the Warrant, as for Treason, Felony, &c. Suspicion of Treason, or Felony, or the like particular Crime; For if it do not thus specify the Cause, if the Prisoner bring his Habeas Corpus, he must be discharged, because no Crime appears on the Return; Nor is it in such Case any offence at all, if the Prisoner make his escape; whereas if the Mittimus contain the Cause, the escape would respectively be Treason or Felony, though in Truth he were not Guilty of the first offence. And this mentioning the Cause, is agreeable to Scripture, *Acts 5*. p

4. The Warrant or Mittimus containing a lawful Cause, ought to have a lawful conclusion, &c. And him safely to keep until he be delivered by Law, &c. and not until the party committing shall further Order.

If any Man by colour of any Authority, where he hath not any in that particular Case, shall presume to Arrest or Imprison any Man, or cause him

to be Arrested or Imprisoned, this is against this Act, and it is most hateful, when it is done by Countenance of Justice. King *Edw.* the 6th. did Incorporate the Town of Saint *Albans*, and granted to them to make Ordinances, &c. They made a by-Law upon pain of Imprisonment, and it was adjudged to be against this Statute of *Magna Charta*; so it had been, if such an Ordinance had been contained in the Patent it self.

We will sell to no Man, deny to no Man, &c. This is spoken in the Person of the King, who in Judgment of Law in all his Courts of Justice is present; And therefore every Subject of this Realm, for injury done to him, *in Bonis, Terris, vel Persona*, in Person, Lands, or Goods, by any other Subject, *Ecclesiastical or Temporal*, whatever he be without exception, may take his Remedy by the course of the Law, and have Justice and Right for the Injury done him, *Freely* without sale, *Fully* without any denial, and *Speedily* without delay; For Justice must have three Qualities, it must be *Libera*, Free, for nothing is more odious than Justice set to sale; *Plena*, Full, for Justice ought not to limp, or be granted Piece-meal; and *Celeris*, speedy: *Quia Dilatio est quedam negatio*, Delay is a kind of denial; And when all these meet, it is both Justice and Right.

We will not deny nor delay any Man, &c.) These words have been excellently expounded by latter Acts of Parliament, that by no means common right or common law should be disturbed or delayed; no, though it be commanded under the *Great Seal*, or *Privy Seal*, Order, *Writ*, *Letters*, *Message*, or *Commandment whatsoever*, either from the King or any other; and that the Justices shall proceed, as if no such Writs, Letters, Order, Message, or other Commandment were come to them: all our Judges swear to this; for 'tis part of their Oaths, so that if any shall be found wresting the Law to serve a Court

Turn,

Turn, they are perjur'd as well as unjust. The Common-laws of the Realm should by no means be *delayed*, for the Law is the surest Sanctuary that a Man can take, and the strongest Fortres to protect the weakest of all; *Lex est tutissima Cassis*, the Law is a most safe Head-piece, and *sub Clivo legis nemo decipitur*, no man is deceived whilst the Law is his Buckler: but the King may stay his own suit, as a *Capias pro fine*, for the King may Rēspit his Fine, and the like.

All Protections that are not Legal, which appear not in the Register, nor warranted by our Books, are expressly against this Branch, *nulli differemus*, we will not delay any Man: As a Protection under the Great Seal granted to any Man, directed to the Sheriffs, &c. and commanding them that they shall not Arrest him during a certain time at any other Mans suit, which hath words in it, *Per Prerogativam nostram quam nolumus esse Arguendam*; By our *Prerogative*, which we will not have disputed; Yet such Protections have been argued by the Judges, according to their Oath and Duty, and adjudged to be void. As *Mich. 11. H. 7. Rot. 124.* a Protection granted to *Holmes* a Vintner of London, his Factors, Servants and Deputies, &c. Resolved to be against Law. *Pasch. 7. H. 8. Rot. 66.* such a Protection disallowed, and the Sheriff amerced for not executing the Writ, *Mich. 13. and 14. Eliz.* in *Hitchcocks* Case, and many other of latter time: And there is a notable Record of Ancient time in *22 E. 1. John de Marshals Case*; *Non pertinet ad vicecomitem de protectione Regis Judicare, imo ad Curiam.*

Justice or Right] We shall not sell, deny or delay Justice and Right, neither the End, which is *Justice*; nor the *Mean* whereby we may attain to the End, and that is the *Law*: Right, is taken here for *Law*, in the same sence that Justice often is so called.

1. Because it is the *Right Line*, whereby Justice

distributive is Guided and Directed ; and therefore all the Commissioners of Oier and Terminer, of Gaol-delivery, of the Peace, &c. have this Clause, *Facturi quod ad Justitiam pertinet, secundum Legem & Consuetudinem Angliæ* ; that is, to do Justice and Right, according to the Rule of the Law and Custom of England : and that which is called Common Right in 2 E. 3. is called Common-Law in 14 E. 2. &c. and in this sence it is taken, where it is said, *Ita quod stat Rectus in Curia, id est Legi in Curia.*

2. The Law is called *Rectum*, because it discovereth that which is Tort, Crooked or Wrong ; for as Right signifieth Law, so Tort, Crooked or Wrong, signifieth Injuries, and *Injuria est contra Jus*, Injury is against Right. *Recta Linea est index sui & obliqui*, a right line is both declaratory of it self and the oblique. Hereby the Crooked Cord of that which is called Discretion appeareth to be unlawful, unless you take it as it ought to be, *discretio est discernere per Legem, quid sit Justum*, discretion is to discern by the Law what is Just.

3. It is called Right, because it is the best Birth-right the Subject hath, for thereby his Goods, Lands, Wife and Children, his Body, Life, Honour and Estimation are protected from Injury and Wrong : *Major Hereditas venit unicuique nostrum a Jure & Legibus, quam a Parentibus* ; A greater Inheritance descends to us from the Laws, than from our Progenitors.

Thus far the very words of that Oracle of our Law, the Sage and Learned Coke ; which so fully and excellently explain this incomparable Law, that it will be superfluous to add any thing further thereunto.

*A Confirmation of the Charters of the
Liberties of England, and of the
Forrest, made in the 35th Year
of Edw. the First.*

EDward by the Grace of God King of England, Lord of Ireland, and Duke of Guyan, to all those these present Letters shall hear or see, Greeting. Know ye, that we to the Honour of God, and of Holy Church, and to the profit of our Realm, have granted for us and our Heirs, that the Charter of Liberties, and the Charter of the Forrest; which were made by Common Assent of all the Realm, in the time of King Henry our Father, shall be kept in every point without Breach. And we will, that the same Charter shall be sent under our Seal, as well to our Justices of the Forrest, as to others, and to all Sheriffs of Shires, and to all our other Officers, and to all our Cities throughout the Realm, together with our Writs, in the which it shall be contained that they cause the aforesaid Charters to be published, and to declare to the People that we have Confirmed them in all points. And that our Justicers, Sheriffs, Maiors, and other Ministers which under us have the Laws of our Land to guide, shall allow the same Charters pleaded before them in Judgment in all their points, that is to wit, the Great Charter as the Common Law, and the Charter of the Forrest, for the Wealth of our Realm.

Chap. 2. And we will, that if any Judgment be given from henceforth contrary to the points of the Charters aforesaid by the Justicers, or by any other our Ministers that hold plea before them, against the points of the Charters, it shall be undone and holden for nought.

Cap. 3. And we will that the same Charters shall be sent under our Seal, to Cathedral Churches throughout our Realm, there to Remain, and shall be read before the People two times by the Year.

Cap. 4. And that all Archbishops and Bishops shall pronounce the Sentence of Excommunication against all those that by Word, Deed, or Council, do contrary to the foresaid Charters, or that in any point break or undo them. And that the said Curses, be twice a Year denounced and published by the Prelates aforesaid. And if the same Prelates or any of them, be Remiss in the Denunciation of the said Sentences, the Archbishop of *Canterbury* and *York* for the time being, shall compel and distrain them to the Execution of their Duties in Form aforesaid.

Cap. 5. And for so much as divers People of our Realm are in fear, that the Aids and Tasks which they have given to us beforetime towards our Wars, and other Business of their own Grant, or good Will (however they were made) might turn to a bondage to them and their Heirs, because they might be at another time found in the Rolls, and likewise for the prizes taken throughout the Realm by our Ministers: We have granted for us and our Heirs, that we shall not draw no such Aids, Tasks nor Prises into a Custom, for any that hath been done heretofore, be it by Roll, or any other Precedent that may be founden.

Cap. 6. Moreover, we have granted for us and our Heirs, as well to Archbishops, Bishops, Abbots, Priors, and other folk of Holy Church, as also to Earls, Barons, and to all the Commonalty of the Land, that for no business from henceforth, we shall take such manner of Aids, Tasks or Prises, but by the common assent of the Realm, and for the common profit thereof; saving the Ancient Aids and Prises due and accustomed.

Cap. 7. And for so much, as the more part of the Commonalty of the Realm find themselves sore griev-

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ed with the Maletot of Woolls, that is to wit, a Toll of Forty Shillings for every sack of Wooll, and have made Petition to us for to Release the same: We at their Request have clearly Released it, and have granted for us and our Heirs, that we shall not take such things without their common consent and good will, saving to Us and Our Heirs the Custom of Woolls, Skins and Leather, granted before by the Commonalty aforesaid. In Witness of which things we have caused our Letters to be Patent. Witness Edward our Son, at London the 10th of October, and the Twenty five Year of our Reign.

Sententia lata super Chartas.

The Sentence of the Clergy against the Breakers of the Articles above written.

IN the Name of the Father, the Son, and the Holy Ghost, Amen. Whereas our Sovereign Lord the King, to the Honour of God, and of Holy Church, and for the common profit of the Realm, hath granted for him and his Heirs for ever, these Articles above written; Robert Archbishop of Canterbury, Primate of all England admonished all his Province once, twice, and thrice; Because that shortness will not suffer so much Delay, as to give knowledge to all the People of England of these presents in Writing. We therefore enjoyn all Persons, of what Estate soever they be, that they and every of them, as much as in them is, shall uphold and maintain these Articles granted by our Sov. L. the K. in all points. And all those that in any point do Resist or break, or in any manner hereafter procure, Counsel, or any ways assent to resist or break those Ordinances, or go about it, by word or deed, openly or privily, by any manner of Pretence or Colour: We the foresaid Archbishop by our Authority in this Writing expressed, do Excommunicate and accurse, and from the Body

of our Lord Jesu Christ, and from all the Company of Heaven, and from all the Sacraments of Holy Church do Sequester and exclude.

NOTE S.

It may be observed, that this Curse is left out of our late Printed Statute-Book, though inserted at large in that Printed in three Volumns, in Queen Elizabeth's days, Anno. 1557. There is likewise another like dreadful, but more full and expresse Curse, Solemnly pronounced before in the time of King Henry 3d. which being also omitted in our Modern Statute-Book, I shall add here for the Readers satisfaction.

The Sentence or Cūse given by the Bishops against the Breakers of the Great Charter.

IN the Year of our Lord, One thousand two hundred and fifty three, the Third day of May, in the great Hall of the King at Westminster, in the Presence and by the assent of the Lord Henry, by the Grace of God, King of England, and the Lord Richard Earl of Cornwall his Brother, Roger Bigot Earl of Norfolk and Suffolk, Marshal of England, Humphry Earl of Hereford, Henry Earl of Oxford, John Earl Warren, and other Estates of the Realm of England: William Boniface by the Mercy of God Archbishop of Canterbury, Primate of all England; F. of London, H. of Ely, S. of Worcester, E. of Lincoln, W. of Norwich, G. of Hereford, W. of Salisbury, W. of Durham, R. of Exeter, M. of Carlile, W. of Bath, E. of Rochester, T. of Saint Davids: Bishops apperelled in Pontificals with Tapers burning, against the Breakers of the Churches Liberties, and of the Liberties or other Customs of the Realm of England, and namely of those which are contained in the Charter

ter of the Common Liberties of England, and Charter of the Forrest, have denounced the Sentence of Excommunication in this Form. By the Authority of Almighty God, the Father, the Son, and the Holy Ghost, and of the Glorious Mother of God, and perpetual Virgin Mary, of the Blessed Apostles Peter and Paul, and of all Apostles, and of all Martyrs, of Blessed Edward King of England, and of all the Saints of Heaven: We Excommunicate, Accurse, and from the Benefits of our Holy Mother the Church we Sequester All those that hereafter willingly and maliciously deprive or spoil the Church of her Right: And all those that by any Craft or Wiliness do Violate, Break, Diminish, or Change the Churches Liberties, and free Customs contained in the Charters of the Common Liberties, and of the Forrest, granted by our Lord the King, to Archbishops, Bishops and other Prelates of England, and likewise to the Earls, Barons, Knights, and other Freeholders of the Realm: And all that secretly or openly, by Deed, Word or Council, do make Statutes, or observe them being made, and that bring in Customs, or keep them when they be brought in, against the said Liberties, or any of them, the Writers, the Law-makers, Councillors, and the Executioners of them, and all those that shall presume to judge against them. All and every which Persons before mentioned, that wittingly shall commit any of the Premises, let them well know, that they incur the foresaid Sentence ipso facto, [i. e. upon the Deed done.] And those that Commit ought ignorantly, and be admonished, except they reform themselves within 15 dayes after the time of the admonition, and make full satisfaction for that they have done, at the will of the Ordinary, shall be from that time forth wrapped in the said Sentence; and with the same Sentence we burden all those that presume to disturb the Peace of our Sovereign Lord the King, and of the Realm.

To the perpetual Memory of which thing, we the foresaid Prelates have put our Seals to these presents.

So Zealous were our Ancestors to preserve their Liberties from encroachments, that they employed all the strength of humane Policy and Religious Obligations to secure them intire and inviolate. And since this Act is still in as much force as the Act against Conventicles, I cannot sadome the Reason why our Prelates should not as well hold themselves obliged twice a Year to accurse the Infringers thereof, as to Prosecute Protestant Dissenters: However we may note, that by this Statute, Chap. 2. it is expressly provided, that if any Judgments be given from that time forwards against any of the points of *Magna Charta*, they shall be annull'd and holden for nought; therefore *Quere* whether the conviction of Protestant Dissenters by a Justice, and spoiling them of their goods without any Trial and Conviction by a Jury, (which is expressly against the 29 Chapter of *Magna Charta*) ought not to be taken notice of, and redress'd, and the original Promoters thereof to be Curs'd by my Lords the Bishops as aforesaid. ?]

A Statute made Anno 34 Edw. 1. commonly called de Tallageo non Concedendo.

CHAP. I.

The King or his Heirs shall have no Tallage or Aid without consent of Parliament.

NO Tallage or Aid shall be taken or Levied by Us or our Heirs in our Realm, without the good Will and Assent of Arch-Bishops, Bishops, Earls, Barons, Knights, Burgessees, and other Freemen of the Land.

CHAP. II.

CHAP. II.

*Nothing shall be purveyed to the Kings Use
without the Owners consent.*

NO Officer of ours, or of our Heirs, shall take Corn, Leather, Cattel, or any other Goods of any manner of Person, without the good Will and Assent of the Party to whom the Goods belonged.

CHAP. III.

*Nothing shall be taken of Sacks of Wooll by
Colour of Maletot.*

NOthing from henceforth shall be taken of Sacks of Wooll by colour or occasion of Maletot.

CHAP. IV.

All Laws, Liberties, and Customs, confirmed.

WE Will and Grant for Us and our Heirs, That all Clerks and Lay-men of our Land, shall have their Laws, Liberties, and free Customs as largely and wholly, as they have used to have the same at any time when they had them best. (2.) And if any Statutes have been made by Us and our Ancestors, or any Customs brought in contrary to them, or any manner of Article contained in this present Charter: We Will and grant that such manner of Statutes and Customs shall be void and frustrate for evermore.

CHAP. V.

Pardon granted to certain Offenders.

Moreover we have pardoned *Humphrey Bohun*, Earl of *Hereford*, and *Essex*, Constable of *England*, *Roger* Earl of *Norfolk* and *Suffolk*, Marshal of *England*, and other Earls, Barons, Knights, Esquires, and namely, *John de Ferrariis*, with all other being of their Fellowship, Confederacy, and Bond, and also of other that hold 20 l. Land in our Realm, whether they hold of us in Chief or of others, that were appointed at a day certain to pass over with us into *Flanders*, the Rancour and Evil will born against

against us, and all other Offences if any they have committed against us, unto the making of this present Charter.

CHAP. VI.

The Curse of the Church shall be Pronounced against the Breakers of this Charter.

ANd for the more assurance of this thing, we will and grant that all Archbishops and Bishops for ever, shall read this present Charter in Cathedral Churches twice in the Year, and upon the Reading thereof in every of their Parish-Churches shall openly Denounce accursed all those that willingly do procure to be done any thing contrary to the tenour, force and effect of this present Charter in any point and article. In witness of which thing we have set our Seal to this present Charter, together with the Seals of the Archbishops, Bishops, which voluntarily have sworn, that-as much as in them is, they shall observe the tenour of this present Charter in all Causes and Articles, and shall extend their faithful Aid to the keeping thereof, &c.

The Comment.

THe word Tallage is derived from the French word *Tailler*, to share or cut out a part, and is Metaphorically used for any Charge, when the King or any other does cut out or take away any part or share out of a Mans Estate, and being a general word, it includes all Subsidies, Taxes, Tents, Aids, Impositions or other Charges whatsoever.

The word *Maletot* signifies an Evil (that is, an unjust) Toll, Custom, Imposition or Sum of Money.

The occasion of making this Statute was this: King Edward being injured by the French King, resolves to make War against him, and in order thereunto requires of *Humphrey le Bobun* Earl of Hereford and Essex, and Constable of England, and of Roger Bigot.

Bigot Earl of Norfolk and Suffolk, and Marshal of England, and of all the Earls, Barons, Knights, Esquires and Freeholders of 20 l. Land, whether they held of him in Capite, to contribute towards such his expedition, that is, to go in Person or find sufficient Men in their places in his Army; which the Constable and Marshal, and many of the Knights and Esquires, and especially this John Ferrers taking part with them and all the Freemen, stoutly denied, unless it were so ordained and determined by common consent in Parliament according to Law. And it seems the contest grew so hot, that Baker's Chronicle, Folio 99. relates a strange Dialogue that pass'd between them, viz. That when the Earl Marshal told the King, That if his Majesty pleased to go in Person, he would then go with him, and march before him in the Van-Guard, as by right of Inheritance he ought to do; but otherwise he would not stir; the King told him plainly, he should go with any other, though he went not in Person. I am not so bound (saith the Earl) neither will I take that Journey without you: The King swore, By God, Sir Earl, you shall either go or Hang: And I swear by the same Oath (saith the Earl) I will neither go nor Hang. And so the King was forc'd to dispatch his expedition without them. And yet (saith my Lord Coke) altho the King had conceived a deep displeasure against the Constable, Marshal, and others of the Nobility, Gentry, and Commons of the Realm, for denying that which he so much desired, yet, for that they stood in defence of their Laws, Liberties, and free Customs, the said King Edward the First, who (as Sir William Herle Chief Justice of the Common-Pleas, who lived in his time and served him, said in the time of King Edward the 3d.) was the wisest King that ever was; did after his return from beyond the Seas, not only consent to this Statute, whereby all such Tallages and Impositions are forbidden.

bidden for the future, but also passes a Pardon to the said Nobles, &c. of all Rancour, Ill-will and Transgressions, *If any they have committed*; which last words were added, lest by acceptance of a Pardon of Transgression, they should implicitly confess that they had Transgressed; so careful were the Lords and Commons in former times to preserve the Ancient Laws, Liberties, and free Customs of their Country.

But note, these words, *Si quas fecerint*, *If any they have committed*, are left out in all the Printed Books of Statutes; but they are in this Statute recited by *Coke*, in his second Book of Institutes, Fo. 535, and specially noted, which he would never have done, if it had not been so in the *Rolls*. And since 'tis probable there may be many more like *Omissions*, *Mistakes*, or *Falsifications*, crept into the Prints, and for that the *Record* and not the printed *Statute-Book* (varying from the *Records*) is the *Law*, It were to be wished that all the *Rolls of Acts of Parliament* were carefully by some Persons of Learning and Integrity, view'd and Compared with the Prints, and notice taken of all such *Variations*, and of *Errors* committed in the Translations, and of any Statutes of a publick Import, if in force, that were *never printed*, and the same to be made publick.

Anno 25 Edw. 3.

CAP. II.

*A Declaration what Offences shall be
adjudged Treason.*

WHereas diverse opinions have been before this time in what Case Treason shall be said, and in what not. (2.) The King at the Request of the Lords and of the Commons, hath made a declaration in the manner as hereafter followeth, that is to say, When a Man doth Compass or Imagine

gine the Death of our Lord the King, or of our Lady his Queen, or of their eldest Son and Heir. (3.) Or if a man do violate the Kings Companion, or the Kings Eldest Daughter unmarried, or the Wife of the Kings Eldest Son and Heir. (4.) Or if a Man do Levy War against our Lord the King in his Realm, or be Adherent to the Kings Enemies in his Realm, giving them Aid and Comfort in the Realm, or elsewhere, and thereof be provably Attainted of open Deed by the People of their Condition. (5.) And if a Man Counterfeit the Kings Great or Privy-Seal, or his Money. (6.) And if a Man bring false Money into this Realm, Counterfeit to the Money of *England*, as the Money called *Lusburgh*, or other like to the said Money of *England*, knowing the Money to be false, to Merchandise, or make payment, in deceit of our said Lord the King, and of his People. (7.) And if a Man Slay the Chancellor, Treasurer, or the Kings Justice of the one Bench or the other, Justices in *Eyre*, or Justices of Assize, and all other Justices Assigned to Hear and Determine, being in their Places doing their Offices. (8.) And it is to be understood, that in the Cases above rehearsed that ought to be judged Treason, which extends to our Lord the King, and of his Royal Majesty. (9.) And of such Treason the Forfeiture of the Escheats pertaineth to our Lord, as well of the Lands and Tenement holden of other, as of himself. (10.) And moreover, there is another manner of Treason, that is to say, when a Servant slayeth his Master, or a Wife her Husband, or when a Man, Secular or Religious, slayeth his Prelate, to whom he oweth Faith and Obedience. (11.) And of such Treason the Escheats ought to pertain to every Lord of his own Fee. (12.) And because that many other like Cases of Treason may happen in time to come, which a man cannot think nor declare at this present time ; it is Accorded, That if any other Case,

Case, supposed Treason, which is not above specified, doth happen before any Justices, the Justices shall tarry without any going to Judgment of the Treason, till the Cause be shewed and declared before the King and his Parliament, whether it ought to be judged Treason or other Felony. (13.) And if percase any Man of this Realm, Ride Armed covertly or secret with Men of Arms against any other, to Slay him, or Rob him, or Take him, or Retain him till he hath made Fine or Ransome for to have his deliverance, it is not the mind of the King nor his Council, that in such Case it shall be judged Treason, but shall be judged Felony or Trespals, according to the Laws of the Land of old time used, and according as the Case requireth. (14.) And if in such Case or other like, before this time any Justices have judged Treason, and for this cause the Lands and Tenements have come into the Kings hands as forfeit, the chief Lords of the Fee shall have the Escheats of the Tenements holden of them, whether that the same Tenements be in the Kings hands, or in others, by Gift, or in other manner. (15.) Saving always to our Lord the King the Year and the Waste, and the forfeitures of Chattels, which pertain to him in the Cases above named. (16.) And that the Writs of *Scire Facias* be granted in such Case against the Land-Tenants, without other Original, and without allowing any Protection in the said Suit. (17.) And that of the Lands which be in the Kings hands, Writs be granted to the Sheriffs of the Counties where the Lands be, to deliver them out of the Kings hands without delay.

The Comment.

TReason is derived from *Trahir*, which signifies Treacherously to betray; when it concerns the Government and the Publick, 'tis called *High Treason*, but against particular Persons, as a Wife killing her Husband, a Servant his Master, &c. it is *Petty Treason*,

High Treason in the Civil Law is called *Crimen Lese Majestatis*, a Crime wronging Majesty, but in our Common-Law-Latine, *Alta proditio*, and in an Indictment for this offence the word *Proditorie* must be in.

Before the making this Act, so many things were charged as *High Treason*, That no Man knew how to behave himself: Now by this Statute, the particulars of that Grand Crime are reckoned up, and all others excluded, till declared by Parliament. And the settling of this Affair was esteemed of such Importance to the Publick-Weal, That the Parliament wherein this Act passed, was called long after *Benedictum Parliamentum*, the Blessed Parliament.

The substance of this Statute is branched out by my Lord Cook 3d. part of *Instit.* Fol. 3. into six Heads. *viz.*

The first concerning Death, by compassing or imagining the death of the King, Queen, or Prince, and declaring the same by some Overt Deed. By killing and murdering of the Chancellor, Treasurer, Justices of either Bench, Justices in Eyre, Justices of Assize, Justices of Oier and Terminer, In their Places doing their Offices.

The second is to Violate, that is, to Carnally know the Queen, the Kings Eldest Daughter unmarried, or the Princes Wife.

The third is, Levying War against the King.

The

The fourth is, Adhering to the Kings Enemies, within the Realm or without, and declaring the same by some overt Act.

The fifth is, Counterfeiting of the Great, the Privy Seal, or the Kings Coin.

The sixth and last, by bringing into this Realm Counterfeit Mony to the likeness of the Kings Coin.

Now as to the particular Exposition of the several parts of this Statute :

1. *When a man* doth compass, &c. in the Original it is *Quant Homo*, which extends to both Sexes, but one that is *Non compos mentis*, or an Infant within the Age of discretion, is not included; but all *Aliens* within the Realm of *England*, being thereby under the Kings Protection, and owing a Local Allegiance, if they commit Treason may be punished by this Act, but otherwise it is of an *Enemy*.

2. *To compass and Imagine*, Is to contrive, design or intend the death of the King; but this must be declared by some Overt Act. But declaring by an open Act a design to *Depose* or *Imprison* the King, is an Over Act to manifest the compassing his death. For they that will depose their King, will not stick to Murder him, rather than fail of their end, and (as King Charles the First excellently observed, and lamentably experienced) *There are commonly but few steps between the Prisons and the Graves of Princes.*

3. By the word *King*, is intended, 1. A King before his Coronation, as soon as ever the Crown descends upon him, for the Coronation is but a Ceremony. 2. A King *de Facto*, and not *de Jure*, is a King within this Act, and a Treason against him is punishable, tho' the Right Heir get the Crown. 3. A Titular King, as the Husband of the Queen, is not a King within this Act, but the Queen is, for the word *King* here includes both Sexes.

4. What is to be understood by *the Kings Eldest Son and Heir within this Act*? I answer, 1. A second Son.

Son after the death of the first Born, is within the Act, for he is then Eldest. Secondly, The Eldest Son of a Queen Regnant is as well within the Statute, as of a King. Thirdly, The Collateral Heir Apparent or Presumptive is not within this Statute. Roger Mortimer Earl of March was in Anno Dom. 1487. (11 Rich. 2.) Proclaimed Heir Apparent. Anno 39. Hen. 6. Richard Duke of York was likewise Proclaimed Heir Apparent, and so was John de la Poolen, Earl of Lincoln, by Rich. 3. And Henry Marquess of Exeter, by King Henry the 8. But none of these or the like are within the Purview of this Statute, saith my Lord Coke, 3 Instit. fol. 9.

5. Note, Whereas in the Printed Statute-Books, it is there said, *probably Attainted*, the same is a great error: For the words of the Record are, *Et de ceo PROVABLEMENT soit Attaint: And shall be thereof PROVABLY Attaint: And I cannot but admire, that such a Gross mistake should be suffered, since my Lord Coke has so expressly observed the difference, in these words following, 3 Instit. fol. 12. In this Branch (says he) four things are to be observed: 1. This word [Provablement] Provably, that is, upon direct and manifest proof, not upon Conjectural presumptions or Inferences, or strains of Wit, but upon good and sufficient proof. And herein the Adverb [Provablement] provably, hath a great force, and signifieth a direct and plain proof, which word the King, the Lords, and Commons in Parliament did use, for that the offence was heinous, and was so heavily and severely punished, as none other the like, and therefore the offender must Provably be Attainted, which words are as forcible, as upon direct and manifest proof. Note, the word is, not [Probably] for then Commune Argumentum might have served; but the word is, [Provably] be Attainted. Secondly, This word [Attaint] necessarily implyeth that he be proceeded with,*

with, and Attainted according to the due Course and proceedings of Law, and not by Absolute power, or by other means, as in former times had been used. And therefore if a Man doth adhere to the Enemies of the King, or be slain in open War against the King, or otherwise die before the Attainder of Treason, he forfeiteth nothing, because (as this Act saith) he is not Attainted: wherein this Act hath altered that, which before this Act, in Case of Treason was taken for Law; And the Statute of 34 E. 3. Cap. 12. saves nothing to the King, but that which was in Esse, and pertaining to the King at the making of that Act. And this appeareth by a Judgment in Parliament in Ann. 29. H. 6. Cap. 1. That Jack Cade being slain in open Rebellion could no way be punished, or forfeit any thing, and therefore was Attainted by that Act of High Treason. Thirdly, Of open Deed, per *Aper-tum Factum*, these words strengthen the former Exposition of [*Provablement*,] an Overt Act must be alledged in every Indictment upon this Act, and proved. Compassing by bare words is not an Overt Act, as appears by many Temporary Statutes against it. But there must be some open Act, which must be manifestly proved. As if divers do Conspire the Death of the King, and the manner how, and thereupon provide Weapons, Powder, Poison, Harness, send Letters, or the like, for the Execution of the Conspiracy. If a Man be Arraigned upon an Indictment of High Treason, and stand Mute [that is, refuse to Plead] he is not to be Pressed to death, but shall have the same Judgment, and incurr such forfeiture, as if he had been Convicted by Verdict, or had confessed it. For this standeth well with this word [*Provablement*] for *fatetur facinus qui iudicium fugit*. But otherwise, it is in case of Petit Treason, Murder, or other Felony. If a Subject Conspire with a Forreign Prince to Invade the Realm

Realm by open Hostility, and prepare for the same by some Overt Act, this is a sufficient Overt Act for the death of the King. Fourthly, The Composition and Connexion of the words are to be observed, viz. [Thereof be Attainted by open Deed] This (as was resolved by the Justices in Easter Term 35 of Eliz.) relateth to the several and distinct Treasons before expressed (and specially to the Compassing and Imagination of the death of the King, &c. for that is a secret in the Heart) and therefore one of them cannot be an Overt Act for another, as for example: A Conspiracy is had to Levy War, this (as hath been said and so resolved) is no Treason by this Act until it be levied, therefore it is no Overt Act, or manifest proof of the Compassing the Death of the King within this Act; for the Words are [de ceo, &c. thereof] that is, of the Compassing of the death. Divers latter Acts of Parliament have Ordained, That compassing by bare Words or Sayings, should be Treason, but are all either Repealed or Expired (except only that of the 12 Car. 2. herein after recited, which is only to be in force during the Life of his present Majesty, whom God preserve:) And it was wont to be said, bare Words may make an Heretick, but not a Tractor, without an Overt Act. And the Wisdom of the Makers of this Law would not make Words only to be Treason, seeing such variance commonly amongst the Winesses is about the same, as few of them agree together. But if words be set down in Writing by the Delinquent, himself, That is a sufficient Overt Act within this Statute.

In the Preamble of the Statute of 1 Mar. (concerning the Repeal of certain Treasons declared after this Statute of the 23. of Edw. 3. and before that time, and bringing back all things to the measures of this Statute) It is agreed by the whole Parliament, That Laws justly made for the preservation of the
Com-

Common-wealth, without extream punishment, are more often obeyed and kept than Laws and Statutes made with great and extream punishments. And in special such Laws and Statutes so made, whereby not only the ignorant and rude unlearned People, but also learned and expert People minding honesty, are oftentimes trapped and snared, yea many times for Words only, without other Fact or Deed done or perpetrated. Therefore this Act of 25 Edw. 3. doth provide that there must be an Overt Act. But words without any Overt Act, are to be punished in another degree, as an high Misprision.

By People of their condition] That is per Pares, by their Equals.

7. As to Treason by Levyng War against the King, we must note, that tho Conspiring or Compassing to Levy War, without a War de Facto, be no Treason, yet if many Conspire a War, and only some few Actually Levy it, all are guilty of the Treason. Raising a Force to burn or throw down a particular Inclosure is only a Riot, but if it had been to have gone from Town to Town to throw down all Inclosures, or to change Religion, or the like, it were Levyng of War, because the intended mischief is Publick. Holding a Fort or Castle against the Kings Forces, is Levyng of War.

8. As touching the Interpretative Treasons by Killing the Chancellor, Treasurer, Justice of one or the other Bench, Justice in Eyre, or of Assize, or Oier and Terminer. Note, 1. This extends but only to the Persons here named, not to the Lord Steward, Constable, or Marshal, or Lords of Parliament. Secondly, It extends to those only during their Office. Thirdly, It extends only to Killing, not Wounding without Death.

But by the Stat. 3 H. 7. C. 14. Compassing to Kill the King or any of his Council, is made Felony.

9. Counterfeiting the *Great* or *Privy Seal* is Treason; but it must be an *Actual* Counterfeiting thereof, *Compassing* to do it is no Treason: Affixing the Great Seal by the Chancellor without Warrant, is no Treason: Fixing a new Great Seal to another Patent, is a great *Misprision*, but no Treason, being not a Counterfeiting within this Act: But Aiders and Consenters are within this Act. The Counterfeiting of the Privy Signet or Sign Manual, is no Treason within this Act, but made by the Statute, 1. Mar. c. 6.

10. Treason concerning *Coin*, is either *Counterfeiting* the Kings *Coin*, and this was Treason at Common Law, and Judgment only as of Pettit Treason, but *Clipping*, &c being made Treason by subsequent Statutes, the Judgment is to be Drawn, Hang'd, and Quarter'd. *Money* here extends only to the Proper Money of this Realm, But now by the 1. M. c. 6. Forging or Counterfeiting Money made current by Proclamation, is High Treason, and by 14. Eliz. c. 3. Forging of Foreign Coin, not current here, is Misprision of Treason in the Forgers, their Aiders and Abettors—And not that the bare Forging of the Kings Coin, without Uttering, is Treason.

The second Offence concerning Money, here declared to be Treason, is, If any person *bring into this Realm Counterfeit Money*: Where note. 1. It must be Counterfeit: 2. Counterfeited to the similitude of English Money: 3. It must be brought from a Foreign Realm, and therefore not from *Ireland*: 4. It must be brought *knowingly*: 5. *Brought*, and not barely uttered here. But by the Statute *De Moneta*, if *false* or *clipt* money be found in a persons hands, and he be suspicious, he may be Arrested till he can clear himself: 6. He must merchandize therewith, that is make payment thereof.

11. As this Statute leaves all other doubtful matters to be declared Treason in Parliament, but not to be

punish'd as such till so declared. So in succeeding Kings Reigns abundance of other matters were declared Treason, which being found very grievous and dangerous, by the Statute of 1 Mar. Cap. 1. it is Enacted, That thenceforth no Act, Deed, or Offence being by Act of Parliament, or Statute, made Treason, Petty Treason, or Misprision of Treason, by Words, Writing, CIPHERING, Deeds, or otherwise however, shall be taken, had, Deemed or Adjudged to be High-Treason, Petty Treason, or Misprision of Treason, but only such as be declared and expressed to be Treason, Petty Treason, or Misprision of Treason, by this Statute of the 25. Edw. 3.

12. The Offences made High Treason by Statutes since this first of Mary, are as follow.

Refusing the Oath of Supremacy upon second Tender, is Treason by 5. Eliz. Cap. 1. but no Corruption of Blood, so likewise is Extolling the Power of the Bishop of Rome, a Premunire, and the bringing in of Bulls, or putting them in Execution, or Reconciling to the Church of Rome, is Treason by the same Statute. Bringing in Agnus Dei's is a Premunire. 23. Eliz. C. 1. Also absolving Subjects from their Obedience, or Reconciling them to the Obedience of Rome is Treason, 27. Eliz. Cap. 2. So is it likewise for a Priest coming into England, not submitting in two days. The like for English men in Foreign Seminaries.

But Besides these Old Treasons since the happy Restauration of His Majesty, The zealous regards his Subjects in Parliament had, for the safety of his Sacred Person and Government, thought fit to prefer and make the Statute following.

Anno Regni Car. 2. Regis, decimo tertio.

C A P. I.

An Act for Safety and Preservation of His Majesties Person and Government, against Treasonable and Seditious Practises and Attempts.

THe Lords and Commons Assembled in Parliament, deeply Weighing and Considering the Miseries and Calamities, of well nigh twenty years, before your Majesties Happy Return, and withal Reflecting on the Causes and Occasions of so great and deplorable Confusions, do in all humility and thankfulness acknowledge your Majesties incomparable Grace and Goodness to your People, in your Free and General Pardon, Indempnity and Oblivion, by which your Majesty hath been pleased to deliver your Subjects, not only from the Punishment, but also from the Reproach, of their former Miscarriages, which unexampled Piety and Clemency of your Majesty hath Enflamed the Hearts of us your Subjects with an ardent desire to express all possible Zeal and Duty in the Care and Preservation of your Majesties Person (in whose Honour and Happiness consists the good and welfare of your people) and in preventing (as much as may be) all Treasonable and Seditious Practises and Attempts for the time to come. (2.) And because the Growth and Increase of the late Troubles and Disorders, did in a very great measure proceed from a multitude of Seditious Sermons, Pamphlets and Speeches, daily Preached, Printed and Published with a Transcendent boldness, defaming the Person and Government of your Majesty and your Royal Father, wherein men were too much Encouraged, and

(above all) from a wilful mistake of the Supream and Lawful Authority, whilst men were forward to cry up and maintain those Orders and Ordinances Oaths and Covenants, to be Acts Legal and Warrantable, which in themselves had not the least Colour of Law or Justice to support them, from which kind of Distempers, as the present Age is not wholly freed, so Posterity may be apt to Relapse into them, if a timely Remedy be not provided. (3) We therefore the Lords and Commons in Parliament Assembled, having duly considered the Premisses, and Remembring that in the thirteenth year of the Reign of Queen Elizabeth of ever blessed Memory, a right good and profitable Law was made, for Preservation of Her Majesties Person, do most humbly beseech your most Excellent Majesty, that it may be Enacted. (4) And be it Enacted by the Kings most Excellent Majesty, by and with the Advice and Consent of the Lords and Commons in this present Parliament Assembled, and by Authority of the same, That if any Person or Persons whatsoever, after the four and twentieth day of June, in the year of our Lord one thousand six hundred sixty and one, during the Natural Life of our most Gracious Sovereign Lord the King, (whom God Almighty Preserve and Bless, with a Long and Prosperous Reign) shall within the Realm or without, Compass, Imagine, Invent, Devise, or intend Death or Destruction, or any Bodily Harm, tending to the Death or Destruction, Maim, or Wounding, Imprisonment or Restraint of the Person of the same our Sovereign Lord the King. (5) Or to deprive or depose him from the Style, Honour, or Kingly Name of the Imperial Crown of this Realm, or of any other His Majesties Dominions or Countries, (6) To Levy War against His Majesty within this Realm or without. (7) Or to move or stir any Forraigner, and Strangers with force to Invade this Realm, or any other

His Majesties Dominions or Countries, being under His Majesties Obeysance. (8.) And such Compassings, Imaginations, Inventions, Devices or Intentions, or any of them, shall express, utter or declare by any Printing, Writing, Preaching, or malicious and advised Speaking, being Lawfully Convicted thereof, upon the Oaths of two Lawful and Credible Witnesses, upon Tryal, or otherwise Convicted or Attainted by due Course of Law, then every such person and persons so as aforesaid offending shall be deemed, declared and Adjudged to be Traytors, and shall suffer pains of Death, and also lose and Forfeit as in Cases of High Treason.

2. And be it further Enacted by the Authority aforesaid, That if any person or persons at any time after the four and twentieth day of June, in the year of our Lord, one thousand six hundred sixty and one, during his Majesties Life, shall Malitiously and Advisedly publish or affirm the King to be an Heretick or Papist, or that he endeavour to introduce Popery. (2.) Or shall Malitiously and Advisedly by Printing, Writing, Preaching, or other Speaking, Express, Publish, Utter or Declare any words, sentences, or other thing or things to Incite or stir up the people to Hatred or dislike of the Person of His Majesty, or the Established Government, (3) Then every such person and persons, being thereof Legally Convicted, shall be disabled to have or enjoy, and is hereby disabled, and made incapable of having, holding, enjoying, or exercising any Place, Office, or Promotion Ecclesiastical, Civil or Military, or any other Employment in Church and State other than that of his Peerage, and shall likewise, be liable to such further and other Punishments, as by the Common Laws, or Statutes of this Realm, may be inflicted in such Cases. (4) And to the end that no man hereafter may be misled into any Seditious or Unquiet Demeanour, out of an opinion that the Parliament

liament Begun and held at Westminster, upon the third day of November, in the year of our Lord, one thousand six hundred and forty, is yet in being, which is undoubtedly Dissolved and Determined, and so is hereby declared and adjudged to be fully dissolved and determined. (5) Or out of an opinion that there lies any Obligation upon him from any Oath, Covenant or Engagement whatsoever, to endeavour a Change of Government, either in Church or State. (6) Or out of an Opinion, that both Houses of Parliament, or either of them, have a Legislative Power without the King. (7) All which Assertions have been seditiously maintained in some Pamphlets lately Printed, and are daily promoted by the Active Enemies of our Peace and Happiness.

3. Be it therefore further Enacted by the Authority aforesaid, That if any person or persons at any time after the four and twentieth day of June, in the year of our Lord. one thousand six hundred sixty and one, shall Maliciously and Advisedly, by Writing, Printing, Preaching or other Speaking, Express, Publish, Utter, Declare, or Affirm, That the Parliament Begun at Westminster upon the third day of November, in the year of our Lord, one thousand six hundred and forty, is not yet Dissolved, or is not Determined, or that it ought to be in being, or hath yet any Continuance or Existence. (2) Or that there lies any Obligation on him, or any other person from any Oath, Covenant or Engagement whatsoever, to endeavour a Change of Government, either in Church or State. (3) Or that both Houses of Parliament, or either House of Parliament, have or hath a Legislative Power without the King, or any other words to the same Effect. (4) That then every such person and persons so as aforesaid offending shall incurr the danger and penalty of a Premunire mentioned in a Statute

Statute made in the sixteenth year of the Reign of King Richard the Second. (5) And it is hereby also declared, That the Oath usually called the Solemn League and Covenant, was in it self an Unlawful Oath, and Imposed upon the Subjects of this Realm, against the Fundamenaal Laws and Liberties of this Kingdom. (6) And that all Orders and Ordinances, or pretended Orders and Ordinances of both or either Houses of Parliament, for imposing of Oaths, Covenants or Engagements, Levying of Taxes, or Raising of Forces and Arms, to which the Royal Assent, either in Person or by Commission, was not expressly had or given, were in the first Creation and Making, and still are, and so shall be taken to be Null and Void to all Intents and Purposes whatsoever. (7) Provided nevertheless, That all and every person and persons, Bodies Politick and Corporate, who have been, or shall at any time hereafter be questioned for any thing Acted or Done by Colour of any the Orders or Ordinances herein before mentioned and declared to be Null and Void, and are Indemnified by an Act, Intituled, An Act of Free and General Pardon, Indemnity and Oblivion, made in the twelfth year of His Majesties Reign that now is, or shall be Indemnified by any Act of Parliament, shall and may make such use of the said Orders and Ordinances for their Indemnity according to the true intent and meaning of the said Act, and no other, as he or they might have done, if this Act had not been made; any thing in this Act contained notwithstanding.

4. Provided always, That no person be Prosecuted for any of the Offences in this Act mentioned (other than such as are made and declared to be High Treason) unless it be by order of the Kings Majesty, his Heirs or Successors, under his or their Sign Manual, or by order of the Council Table of his Majesty, his Heirs or Successors, directed unto the Attorney General

neral for the time being, or some other of the Council learned to His Majesty, His Heirs or Successors, for the time being. (2) Nor shall any Person or persons by vertue of this present Act incur any the Penalties herein before mentioned, unless he or they be Prosecuted within six months next after the offence Committed, and Indicted thereupon within three months after such Prosecution; any thing herein contained to the contrary notwithstanding.

5. Provided always, and be it Enacted, That no person or persons shall be Indicted, Arraigned, Condemned, Convicted or Attainted for any of the Treasons or Offences aforesaid, unless the same Offender or Offenders be thereof Accused by the Testimony and Disposition of two Lawful and Credible Witnesses upon Oath. (2) Which Witnesses at the time of the said Offender or Offenders Arraignment, shall be brought in person before him or them Face to Face, and shall openly avow and maintain upon Oath, what they have to say against him or them, concerning the Treason or Offences contained in the said Indictment, unless the party or parties Arraigned shall willingly without violence Confess the same.

6. Provided likewise and be it Enacted, That this Act, or any thing therein contained, shall not extend to deprive either of the Houses of Parliament, or any of their Members, of their just Antient Freedom, and Priviledge of Debating any matters or business which shall be propounded or debated in either of the said Houses, or at any Conferences or Committees of both or either of the said Houses of Parliament, or touching the Repeal or Alteration of any Old, or preparing any New Laws, or the Redressing of any Publick Grievance; but that the said Members of either of the said Houses, and the

the Assistants of the House of Peers and every of them, shall have the same freedom of Speech, and all other Priviledges whatsoever, as they had before the making of this Act; any thing in this Act to the contrary thereof in any wise notwithstanding.

7. Provided always, and be it ordained and enacted, That no Peer of this Realm shall be Tried for any Offences against this Act, but by his Peers; (2.) And further, that every Peer who shall be Convicted of any Offence against this Act, after such Conviction, be disabled during his Life, to sit in Parliament, unless His Majesty shall graciously be pleased to pardon him? (3.) And if His Majesty shall grant his Pardon to any Peer of this Realm, or Commoner Convicted of any Offence against this Act, after such Pardon Granted, the Peer or Commoner so pardoned shall be Restored to all Intents and purposes as if he had never been Convicted, any thing in this Law to the contrary in any wise notwithstanding.

Notes

THough the wisdom of our Legislators is not generally for bringing words within the compass of Treason, yet upon emergent occasions it has been done, but then with a *Temporary Limitation*, as by the Statute 13. Eliz. here referred unto, during the Life of that Queen; In imitation whereof this present Act is made to remain in force during only the Life of our present Sovereign King Charles the Second, And the reasons formaking this Temporary Law are assigned in the preamble.

This Statute makes three sorts of Offences. Some High Treason; some that disable and in capacitate from holding any place or Office; and some that are punishable by Premunire.

As to the first, 'tis hereby declared to be High

D-3

Treason.

Treason during the Life of his present Majesty,

1. Within or without the Realm to compass or intend the Death, Destruction, Maim, Wounding Imprisonment or Restraint of the King.

2. Or to deprive or *depose* him, or *Levy War* against him, within the Realm or without, to stir up Forreigners to *invade* the Realm.

If such Compassings or Intentions be expressed, uttered or declared by any *Printing, Writing, Preaching*, or malicious and advised *speaking*.

Being legally Convicted thereof upon the Oaths of *two lawful* and **CREDIBLE** Witnesses: [By which words, the Statute seems to injoin and require some *more than Ordinary* Scrutiny, into the Credit of the Witnesses, for otherwise *Legal* had been enough, (and so is every man not *Convict of Perjury*) but Witnesses in this Case must not be only *Legal* but *Credible, not infamous, scandalous, or suspected*]

③ As to the second, Maliciously and advisedly to publish or affirm during his present Majesties Life, that the King is an--*Heretick*--or--a *Papist*--or that he *endeavours to introduce Popery*.

Or maliciously and advisedly by Writing Printing, Preaching, or speaking to utter, express or declare any Words, Sentences or thing, to stir up the people to *hatred or dislike of the Person of His Majesty* or the established Government.

Whoever is legally Convicted of any of these Crimes shall be disabled to hold any *place, Office, or promotion*, Ecclesiastical, Civil or Military. And besides be liable to such punishments as by the Common Laws or Statutes may be inflicted.

As to the third, to declare, publish, or affirm, first, that the *Old long Parliament* of 40 is not *dissolved*, or ought to be in being. Secondly, That there lies any obligation on ones-self, or any other person from any *Oath, Covenant, or Engagement*, to endeavour a change of Government either in Church or State.

Thirdly

Thirdly, that *either or both Houses* of Parliament have a Legislative power without the King, or any other words to the same effect.

The person so offending shall incur the penalty of a *Premunire*, which by the Statute of 16 Rich. 2 Cap. 5. here referr'd unto, is this, *viz.* To be put out of the Kings *Protection*, their Lands and Tenements, goods and Chattels, *Forfeited* to the King, and their bodies to be seized, &c. But in this Act of the 13 *Caroli*, there are these Proviso's.

1. As for the *two last Sorts* of Offences that are not Treason, none shall be prosecuted but by *order of the King*, under his Sign Manual or of the privy Council.

2. As for the crimes made *Treasons*, none shall be Indicted or Convicted unless they be *ACCUSED* by two Lawfull and *Credible* Witnesses, touching the Addition of the word *Credible* to Lawfull, (which is here again repeated) we have spoken before; But must here further observe,

1. That by these express words, this Statute provides that no man shall be *Indicted*, [that is, have a Bill found against him] upon this Statute for Treason, unless he be *Accused*, [that is, unless the matter be sworn against him before the Grand Jury] by two not only Lawful, but *CREDIBLE* Witnesses, for the words are not only, *he shall not be Convicted* [which is the work of the *Petty Jury*, or Jury of Life and Death, as 'tis commonly called,] But he shall not be *Indicted* [which is the business of the Grand Jury] And therefore Grand-Juries besides their *general and ordinary Right* and power by Law, have when any person is Indicted upon *this Statute*, a special right and direction from the *Act it self* to Examine and be well satisfied in the *Credibility* of the Witnesses; which if duly considered, would perhaps much mitigate the Clamours lately raised against some Juries for their Returning some Bills before them *Ignoramus*, though the matters therein were roundly sworn.

sworn unto by *Legal*, but probably in *their esteem* and Judgment, as they were upon their Oaths, not sufficiently *Credible* Witnesses; especially when their *Stories* were no less *Incredible* than their persons.

Secondly, Note that as a person cannot be Convicted or Indicted, so neither can he be so much as *Committed* for any Offence made Treason by this Act, by or upon the Oaths of any *single Witness*; though there should be never so much presumption that more may come in against him before he be brought to Trial, for the words are—*Unless he be thereof accused by the Testimony and deposition of Two Lawful and Credible Witnesses, which Witnesses at his Arraignment shall be brought before him face to face, &c.* So that 'tis evidently intended the original accusation before the Justice or Magistrate that shall Commit the person must be by two such *Witnesses*, and that the same two *Witnesses* (and not *others*, leaving them that first charged him out, though yet others no doubt may be *added* to them) must give Evidence to the Grand Jury, and at his Trial.

3. There is in this Act a *third proviso*, that no person shall incur any the Penalties in this Act mentioned *unless*, 1. He be *Prosecuted*, [that is charged before a Magistrate, or Committed] within *six Months* after the Offence Committed. Secondly, and unless he be Indicted thereupon within *three Months* after such Prosecution. So that if in either of these Respects the time be elapsed, the Grand Jury ought not to find the Bill.

4. Provided, this Act shall not infringe the *Privileges* or Freedom of Debates in either of the Houses of Parliament, or any Committee of them.

5. That a *Peer* shall be tryed for any Offence against this Act by his Peers, but if Convicted, shall be disabled to sit in Parliament during Life. And thus much for what is Treason at this day.

By the Statute of 1 and 2 *Phil.* and *Mar. cap. 10.*
All

All Trials for Treason shall be only according to the Course of the Common Law. And though the greater part of that Statute, being Temporary, be expired, yet this Clause is still in Force.

The Judgment in all Cases of High Treason, except for Counterfeiting Coin (for a man) is, That he shall be drawn on an Hurdle or Sledge to the place of Execution and there be Hanged by the Neck, to be cut down being yet alive, his Privy Members cut off, his Bowels ript up, taken out, and burnt before his face, his Head severed from his Body, his Body divided into four Quarters, which are to be disposed of as the King shall order—But for Counterfeiting Coin, only Drawn and Hanged. And in both Cases for a Woman (for Modesty sake) it is only that she shall be Burnt.

The reasons or signification of this horrid Judgment on a man for Treason, are thus by some rendered and Interpreted.

1. He is drawn on a Sledg or Hurdle on the ground in the Dirt, to shew that his Pride is brought down, for Treason commonly springs from Ambition.

2. On this Hurdle he is drawn backward, to shew that his Actings have been contrary to Order, unnatural and Preposterous.

3. He is Hanged between Heaven and Earth, as unworthy of either.

4. He is cut down yet alive, and his Privities cut off, to shew that he was unfit to Propagate any Posterity.

5. His Head is severed from his Body, because his mischeivous Brain contrived the Treason.

6. His Body is divided, to shew that all his Machinations and Devices are torn to pieces, and brought to nought; and into four parts, that they may be scattered towards the four Quarters of the World.

Heading being part of the judgment in Treason, the King commonly to persons of Quality Pardons

done all the rest, of the Sentence, and so they are only *Beheaded*. But if a person be Attainted of Murder or any other Felony, if he be Beheaded, 'tis no Execution of the Judgment, because there the Judgment always is, that he be Hanged till he be dead, which cannot be altered. So that had Count Conningmark lately been Convicted and Condemned for the Murder of Esquire Thynn, all his *Guinies* or his *Friends* could not have preserved him from the Gallows, unless they could have got an intire Pardon.

Any person being Indicted for Treason may Challenge [that is except against or refuse] *Five and Thirty Jurors, peremptorily* [that is, for his pleasure, or for reasons best known to himself, and without assigning any Cause to the Court. But if he Challenge more, that is above three full Juries, he Forfeits his Goods, and Judgment of *Peinfort & dure*, [that is of being pressed to Death] shall pass upon him as one that refuseth the Trial of the Law.

In Cases of *Murder* and *Felony* a man cannot Challenge peremptorily above the number of Twenty; But with Cause he may except against more. And this is by the Stat. of 22. H. 8. cap. 14.

And certainly since the Law of England, which is a Law of Mercy, does in Favour of Life, not only order a man to be Tryed by a Jury of his Country and Equals, but also allows him to refuse, and have Liberty of excepting against so many of those as shall be Impanelled for that purpose; It cannot be supposed that the same Law ever intended that the Prisoner should be denied a Copy of the Panel of his Jury, that so by the Information of his Friends or otherwise, he may know their Qualities, Circumstances and Inclinations; for how else shall he know whom to Challenge peremptorily, and whom to Challenge with Cause; to allow a man such Liberty of Challenge, and give him no opportunity of such Inquiry

quiry, is but to *mock the Prisoner*, to whom possibly the whole Jury by *face and name* may be utter Strangers; and sure the wisdom of our Laws never thought every Prisoner so skilled in *Metoposcopy*, that merely by *looking* on a parcel of men he could tell which of them were indifferent, and which biased against him.

Another Statute of King Edward the third.

Anno 2. Edw. 3. cap. 2.

In what Cases only Pardon of Felony shall be granted, &c.

ITem, *Whereas Offendors have been greatly encouraged, because the Charters of Pardon have been so easily granted in times past of Man-slaughters, Roberies, Felonies, and other Trespasses against the Peace,* (2) *It is ordained and Enacted that such Charters shall not be granted, but only where the King may do it by his Oath, that is to say, where a man slayeth another in his own Defence, or by Misfortune.* (3) *And also they have been encouraged because that the Justices of the Goal-Delivery, and of Oyer and Terminer, have been procured by great men, against the Form of the Statute made in the 27th year of the Reign of King Edward, Grandfather to our Lord the King that now is, wherein is Contained that Justices Assigned to take Assizes, if they be Lay-Men, shall make deliverance, and if the one be a Clerk, and the other a Lay-man, that the Lay-Judge with another of the Countrey associate to him, shall deliver the Goals.* (4) *Wherefore it is Enacted, that Justices shall not be made against the Form of the said Statute;* (5) *And that the Assizes, Attaints, and Certifications be taken before the Justices, commonly*

monly Assigned, which should be good men and Lawful, having knowledge of the Law, and none other, after the Form if another Statute made in the time of the said King Edward the first. (6) And that the Oyers and Terminers shall not be granted, but before the Justices of the one Bench or the other, or the Justices Errants, and that great hurt, or horrible Trespasses, and of the Kings special Grace, after the Form of the Statute thereof ordained in time of the said Grandfather, and none otherwise.

The Comment.

Touching this Statute and several others to the same purpose, as 14. *Edw. 3. cap. 14.* and 10. *Edw. 3. cap. 2.* and 13. *R. 2. cap. 1.* and 16. *R. cap. 6.* &c.

We shall only give you the words of Cook in the third part of his *Instit. fo. 236.*

What things the King may pardon, and in what manner, and what he cannot pardon, falleth now to be treated of.

IN case of death of man, Robberies and Felonies against the Peace, divers Acts of Parliament have Restrained the power of granting Charters of pardons; first, that no such Charters shall be granted, but in case where the King may do it by his Oath; Secondly, That no man shall obtain Charters out of Parliament, Stat. 4. *Edw. 3. cap. 13.* And accordingly in a Parliament Roll it is said, [for the Peace of the Land it would much help, if good Justices were appointed in every County, if such as be let to mainprize do put in good Sureties, as Esquires or Gentlemen: And that no pardon were granted but by Parliament]

Thirdly.

Thirdly, For that the King hath granted Pardons of Felonies upon *false Suggestions*, it is provided, that every Charter of Felony which shall be granted at the Suggestion of any, the name of him that maketh the Suggestion shall be comprised in the Charter, and if the Suggestion be found untrue, the Charter shall be disallowed. And the like provision is made by the Statute of 5. H. 4. Cap 2. for the Pardon of an Approver.

Fourthly, It is provided that no Charter of Pardon for Murder, Treason, or Rape, shall be allowed, &c. If they be not specified in the same Charter. Statute 13. R. 2. Before this Statute of 13. R. 2. by the Pardon of all Felonies, Treason was Pardoned, and so was Murder, &c. At this day by the Pardon of all Felonies, the death of man is not Pardoned. These be excellent Laws for direction, and for the Peace of the Realm. But it hath been conceived, (which we will not question) that the King may dispence with these Laws by a *Non Obstante*, [notwithstanding,] be it General or Special (albeit we find not any such Clauses of *non Obstante*, notwithstanding, to dispense with any of these Statutes, (but of late times) These Statutes are excellent Instructions for a Religious and Prudent King to follow, for in these Cases, *Ut summæ potestatis Regiæ est posse quantum velit, sic Magnitudinis est velle quantum possit*, [As it is the highest Kingly power to be able to Act what he Wills, so it is his Greatness and Nobleness to Will only what he lawfully can.] Hereof you may Read more in Justice Standford, Lib. 2. Cap. 35. in diverse places of that Chapter, of his grave Advice in that behalf. Most certain it is, that the Word of God has set down this undisputable General Rule, *Quia non profetur Cito Contra malos sententia, filii hominum sine timore ullo perpetrant*, [because Sentence against evil men is not speedily Executed, therefore the hearts of the Children of men are

are set in them to do evil] And thereupon the Rule of Law is grounded. *Spes Impunitatis Continuum Affectum tribuit delinquendi*, [the hope of Impunity encourageth Offenders] *Et veniæ facilitas Incentivum est Delinquendi*, and the facility of obtaining Pardon is an Incentive to Commit Offences] This is to be Added, that the Intention of the said Act of 13. R. 2. Was not that the King should grant a Pardon of Murder by exprefs Name in the Charter, but because the whole Parliament conceived, that he would never Pardon Murder by special Name for the Causes aforesaid, therefore that provision made, which was (as in other Cases I have observed) grounded upon the Law of God, *Quicumque effuderit humanum sanguinem, fundetur sanguis illius; ad imaginem quippe Dei creatus est homo nec aliter Expiari potest, nisi per ejus sanguinem, qui alterius sanguinem effuderit*, [whosoever shall shed mans blood, by man also shall his blood be shed, because man was Created after the Image of God, neither can it be expiated otherwise then by his blood, who spilt the blood of another.] And the words of every Pardon is after the Recital of the offence, *nos pietate moti*, &c. we being moved with Piety, &c. But it can be no Piety to violate an exprefs Law of God, by letting Murder scape unpunisht. Thus Coke, whereby we see what opinion he had of such Pardons.

*A brief digression concerning the Nature of
A P P E A L S.*

THis Discourse of *Pardons* puts us in mind of another kind of Legal Prosecution called an *Appeal*: of which it may be very convenient to give the Reader some brief account. You must know then for several Offences, for which a man deserveth death, and particularly for *Murder*, there are *two ways* to bring him to Answer for the same, one by *Indictment*, which is *at the Kings Suit*, and the other by *Appeal*, which is *at the Suit of a Party* which is wronged or injured by the Murder: as a *Woman* whose Husband, or a *Child*, or *Brother*, whose Father or Brother is Killed. pp

Now upon an Indictment, if the Offender be found *Guilty*, because its to be at the Suit of the King, it has been said by some, may be and too often a Pardon, has been obtained (tho even That too be against Law, as appears by the Premises) But in an *Appeal* all agree, the King can grant no Pardon, Nay if a person be tryed by Indictment, and Acquitted, or Convicted and get a *Pardon*, yet an *Appeal* may be brought, and if he be thereupon Convicted, notwithstanding such his former Acquittal, or *Pardon*, he must be *Hanged*. js

The word *Appeal* is derived from the French Verb *Appeller*, to Call, because he or she that brings it, Calls the Defendant to Judgment; but the meaning thereof is all one with *An Accusation*, And is peculiarly in Legal signification applyed to Appeals of *Three sorts*; First an *Appeal* brought by an Heir Male for some wrong done to his Ancestor whose Heir he is. Secondly, Of wrong done to an Husband, and is by the Wife only, if it be for the death of her Husband, to be Prosecuted. The third is of wrong

wrongs done to the Appellants themselves as for Robbery, Rape, or Maim *Coke 1. Instit. Sect. 500.*

Note that this Appeal must be brought *within a year and a day* after the Murder is committed. For afterwards it cannot be brought at all. And antiently it was customary not to bring an Indictment for the King, till after the year and the day, waiting in the mean time for the Prosecution of the Party, but this was found very inconvenient, for the Party was frequently compounded with, and at the years end the business was forgot, and so Offenders escaped Justice.

And therefore the same was altered by the Statute *3 Hen. 7. Cap. 1.* Whereby it is Enacted, "That the Coroner shall do his Office, and the Offenders may be Arraigned at any time within the year, at the Kings Suit, but if Acquitted, yet the party within the year and day should have liberty to bring an Appeal against such person, either Acquitted or Attainted, if the benefit of the Clergy be not before thereof had. And in order thereunto that when any person happened to be Acquitted for the death of a man, within the year, the Justices before whom he is Acquitted, shall not suffer him to go at large, but either to remit him again to the Prison, or else to let him to Bail after their discretion, till that the day and the year be passed, that so he may be forth coming to Answer an Appeal, if it shall happen to be brought.

Thus that Statute; as to the *latter Clause* whereof, you see the Judges have power in *Case of Acquittal* to keep the Party in Prison still, till the *day and year* be over. Or else to admit him to Bail; and tho this be left to their Discretion, yet it must not be such a Discretion, as confounds all Discretion: but they must weigh the Circumstances, and go according to Law and Judgment; and certainly the law intended such Bail, if any be accepted, should be bound *Body* for

for Body, for otherwise it seems no security. And therefore many wise men wondered the other day when Count Conning smark was Acquitted on the Indictment for the Barbarous Murder of Esquire Thynn, that he was suffered to go so soon abroad, for being a Stranger, he was never like to come again into England, and being so rich, what values he to discharge the Forfeitures of his Sureties Recognizances, which likewise may be easily Compounded. At most, the Forfeiture is to the King, and what is it that to the next Heir or Kinsman? He is by this means Outed of his Legal Remedy to Revenge the Blood of his near and dear Relation——*Sed hæc Obiter.*

The form of an Appeal of Murder.

I C. Hic Instanter Appellat W. E. &c. (In English thus) I here instantly Appeals W. F. of the death of his Brother H. C. For that whereas the aforesaid H. was in the Peace of God, and the King, at Tonbridge in the County of Kent, the twenty eighth day of March, in the thirty fourth year of the Reign of our Lord Charles the Second, &c. at seven a Clock in the Evening of the same Day, came the said W. F. as a felon, of our Lord the King in a premeditated

meditated Assault, with Force and Arms, &c. And upon him the said H. C. then and there feloniously an Assault did make, and with a certain Sword, of the price of twelve pence, which he then and there in his Right Hand did hold, the aforesaid H. upon his Head did strike, and one mortal wound of two Inches long in forepart of his Head, even unto the Brain, to the said H. did then and there feloniously give; of which said wound the said H. for three days then next following did Languish, and then, viz. the [such a] day of [such a month,] he there died, [or if the case be so, Instantly died] And so the said W. H. as a Felon of our Lord the King, the aforesaid H. feloniously did Kill and Murder, against the Peace of our said Lord the King, his Crown and Dignity: And that this he did wickedly, and as a Felon against the Peace of God, and our Lord the King the aforesaid offers that the same

same be detained as the Court of our Lord the King shall think meet. Diversity of Courts and Jurisdictions, Written in the time of King Hen. 8.

1. Note, That a women cannot now bring an Appeal for the death of any other Ancestors, being barred therefrom by *Magna Charta*, Cap. 34. whereas (as you have heard) it is provided that none shall be taken or Imprisoned upon the Appeal of any woman for the death of any Person, but only of her Husband. But she may at this day bring an Appeal of Robbery, &c. For wherein she is not by that Statute restrained. *Coke 2d. Instit. fol. 68.*

2. The women that brings an Appeal for the death of her Husband, must be his Wife not only *de Facto* but *de Jure*, not only called and reputed, or cohabiting with him, but actually and legally Married to him; and of such a Wife the Antient-Law-Books, speaks, *de morte viri Inter Brachia sua Interfecti*, the Husband is killed within her Arms, that is whilst he was legally in her possession; but that the Appellant and the person killed, were not ever lawfully coupled in Matrimony, is a good Plea in an Appeal.

3. This Right of Appeal for the death of her Husband is annexed to her Widdow-hood, as her *Quarentine* is, and therefore if the Wife of the Dead Marry again, her Appeal is gone, even altho the second Husband should die within the year & day after the Murder of the first: For she must all the while before the Appeal be brought, continue *Femina viri sui*, his Widdow, upon whose death the Appeal is brought: furthermore if she bring the Appeal during her Widdow-hood, and take a Husband whilst it is depending, the Appeal shall *Abate* (that is be out

out of doors) for ever, Nay, if on her Appeal she hath Judgment against the Defendant, if afterwards she take an Husband before the Defendant be Hanged, she can never have Execution of death against him.

4. By the Statute of *Glocest.* made in the sixth year of King *Edw. 1. Cap. 9.* It is Enacted that if an Appeal set forth the Deed, the year, the day, the hour, the Reign of the King, and the Town where the Deed was done, and with what Weapon the Party was slain, the Appeal shall stand in effect, and shall not be abated for default of fresh Suit, if the party shall Sue within the year and the day after the Deed done

5. As for *the year and day* here mentioned, it is to be accounted for the whole year according to the Calendar, and not for twelve Months, at twenty eight days to the Month. So likewise the day intended is a Natural day. And this year and day must be accounted after the Felony and Murder Committed. Now if a man be Mortally Wounded, on the first day of *May*, and thereof Languishes to the first day of *June*, and then dies; the Question here arises whether the year and the day allowed for bringing the Appeal is to be reckoned from the giving the Wound, or the time of Death. Some have held the former: For that the Death ensuing, hath Relation to it, and that is the Cause of the Death, and the Offender did nothing the day of the Death. But the truth is, the year and day shall be accounted only from the first of *June*, the day of the Death; for before that time no Felony was Committed: and thus it hath often been resolved and Adjudged, and the reason abovesaid grounded upon Relation (which is a Fiction in Law) holdeth not in this Case. *Coke 2. Ingit. fol. 320.*

6. If an Appeal of Murder be brought, and depending the Suit, and after the Year and Day is elapsed, one become accessory to the Murder, the Plaintiff shall have an Appeal against him after the Year and Day past after the Death, but it must be brought within the Year and Day after this new Felony as accessory.

7. If a Man be Indicted for Murder and Convicted only of Man-slaughter, and have the Benefit of his Clergy it seems the Wife and Heir cannot afterwards bring their Appeal. Touching which the Lord Cook 3 Instit. Fo. 131. cites a Case in these words: Thomas Burghe, Brother and Heir of Henry Burghe brought an Appeal of Murder against Thomas Holcroft, of the Death of the said Henry: The Defendant pleaded, that before the Coroner, he was Indicted of Man-slaughter, and before Commissioners of Oyer and Terminer, he was upon that Indictment Arraigned, and confessed the Indictment, and prayed his Clergy, and thereupon was Entred Curia advisare vult, the Court will consider; whereupon he demanded Judgment, whether the Plaintiffe ought to maintain that Appeal he had brought. To which the Plaintiffe demurred in Law. And in this Case three points were adjudged by Sir Christopher Wray, Sir Thomas Gawdy and the whole Court.

First, That the matter of the Bar had been a good Bar of the Appeal by the Common Law, as well as if the Clergy had been Allowed: For that the Defendant, upon his Confession of the Indictment had prayed his Clergy, which the Court ought to have granted, and the deferring of the Court to be advised, ought not to prejudice the Party Defendant, albeit the Appeal was Commenced before the Allowance of it.

The second point adjudged was, that this Case was out of the Statute of 3 Hen. 7. For that the words of that Act are,

If it fortune that the same Felons and Murderers, and Accessaries so Arraigned, or any of them, to be Acquitted, or the Principal of the said Felony, or any of them to be Attainted, the Wife or next Heir of him so slain, &c. may have their Appeal of the same Death and Murder against the Person so Acquitted, or against the said Principals so Attainted, if they be alive, and that THE BENEFIT OF HIS **†**CLERGY THEREOF before be not had.

And in this the Defendant Holcroft, was neither Acquitted nor Attainted, but Convicted by Confession, and the Benefit of the Clergy only prayed, as is aforesaid, so as the Statute being penal concerning the Life of Man, and made in Restraint of the Common Law, was not to be taken by Equity, but is *Casus Omissus*, a Case Omitted, and left to the Common Law.

As to the Third, is was objected, that every Plea ought to have an apt Conclusion, and that the Conclusion in this Case ought to have been, *Et petit iudicium si prædiit Thomas Holcroft Iterum de eadem morte, de qua semel Convictus fuit, Respondere compelli debeat.* And he does ask judgment if the above mentione Thomas Holcroft shall be obliged to answer againe for the same death, he was once Convicted of] But it was adjudged that either of both Conclusions was sufficient in Law: And therefore that exception was disallowed by the Rule of the Court.

Note, the ancient Law was, that when a Man had judgment to be hanged in an Appeal of Death, that *the Wife, and all the Blood of the Party slain should draw the Defendant to Execution, and Gascoigne said, Issent fuit in diebus nostris, so it was done in our Days.*

And thus much occasionally about Appeals, which we the rather inserted because the practice thereof (through I know not whose negligence) has been almost lost or forgot; till some few Years ago a Woman

man in *Southwark* revived it against one that killed her Husband and got a pardon for it, but she Prosecuted him on Appeal, had judgment against him, and he was Executed, since which time the same Course has been frequently talkt of, and brought, but for the most part (to the shame I think of those Women or Children who make *such Compositions* for their Husbands or Fathers Blood) they have been by some *secret Bargains* or *Compensations* bush't up, and seldom effectually followed.

Two other Statutes of King *Edw. 3.*

Anno 4. Edw. 3. cap. 14.

A Parliament shall be holden once every year.

I Tem, It is accorded that a Parliament shall be holden every year once, and more often, if need be.

Anno 36. Edw. 3. cap. 10.

A Parliament shall be holden once in the year.

I Tem, for maintenance of the said Articles and Statutes, and Redress of divers MISCHIEFS and GRIEVANCES, which daily happen, a Parliament shall be holden every year, as another time was ordained by Statute.

The Comment.

BEfore the Conquest (as the Victory of Duke William of Normandy over Harold the Usurper, is commonly, though very improperly called)

Parliaments were to be held twice every year, as appears by the Laws of King Edgar, cap. 5. and the Testimony of the *Mirroure of Iustices*, cap. 1. sect. 3. For the Estates of the Realm. King Alfred caused the Committees (some English Translations of that ancient Book read, *Earls*, but the word seems rather to signifie Commissioners, Trustees, or Representatives) to meet, and ordained for a PERPETUAL USAGE, that twice in the year, or oftner, if need were, in time of Peace they should Assemble at London, to speak their Minds for the guiding of the People of God, how they should keep themselves from Offences, live in quiet and have right done them by certain Usages and sound Judgments. King Edward the first (says Cook, 4. Instit. fol. 97.) kept a Parliament once every two years for the most part: And now in this King Edward the Thirds time (one of the wisest and most glorious of all our Kings) It was thought fit to Enact by these two several Statutes, That a Parliament should be held once at least ***every year**, which two Statutes are to this day in full Force: For they are not Repealed, but rather Confirmed by the Statute made in the 16th of our present Sovereign, King Charles the Second, Cap. 1. Intituled, *An Act for the Assembling and holding of Parliaments once in three years at the least*: The words of which are as follow.

Because by the ancient Laws and Statutes of this Realm, made in the Reign of King Edward the third, Parliaments are to be held very often, your Majesties Humble and Loyal Subjects, the Lords Spiritual and Temporal, and the Commons in this present Parliament Assembled, most Humbly do beseech your most Excellent Majesty, that it may be declared and Enacted, (2) And be it declared and Enacted by the Authority aforesaid, that hereafter the sitting and holding of Parliaments shall not be intermitted or discontinued above Three Years at the

the most ; but that within three years from and after the Determination of this present Parliament, so from time to time within three years after the Determination of any other Parliament or Parliaments, or if there be occasion, more or oftner, Your Majesty, your Heirs and Successors, do Issue out your Writs for calling, Assembling and holding of another Parliament, to the end there may be a frequent calling, Assembling and holding of Parliaments once in three years at the least.

Agreeable to these good and wholesome Laws are those gracious Expressions and Promises in His Majesties Proclamation touching the Causes and Reasons of Dissolving the two last Parliaments, Dated April 8. 1681. Irregularities in Parliament shall NEVER make us out of love with Parliaments, which we look upon as the best Method for healing the distempers of the Kingdom, and the only means to preserve the Monarchy in that due Credit and Respect which it ought to have both at home and abroad. And for this Cause we are resolved by the blessing of God to have frequent Parliaments ; And both in and out of Parliament to use OUR UTMOST ENDEAVOURS TO EXTIRPATE POPERY, and to Redress all the Grievances of our good Subjects, and in all things to Govern according to the Laws of the Kingdom.

A DIGRESSION touching the Antiquity, Use, and Power of PARLIAMENTS, and the Qualification of such Gentlemen as are fit to be chosen the Peoples Representatives.

THE Recital of these several Laws for frequent calling of Parliaments, declaring the same to be of such Importance or Necessity to the safety and wel-be-

ing of the Nation, Invites us to give the vulgar Reader some further Information touching those most Honourable Assemblies, which though a digression will I hope be no Transgression, for I am willing at any time to go a little out of my way, provided I may thereby meet with the Readers profit and Advantage.

Of the Names and Antiquity of Parliaments.

THE word PARLIAMENT is *French*, derived from the three words *Parler la ment*, to speak ones mind, because every Member of that Court should sincerely and discreetly speak his mind for the general good of the Common-Wealth, and this name (saith Cook 1 *Instit.* fo. 110.) was used before William the Conqueror, even in the time of Edward the Confessor. But most commonly in the Saxons time, it was called *Michegemote* or *Witenage Mote*, that is, the Great Mote [Meeting or Assembly, whence our Ward-Mootes in London receive their name to this day] or the *Wise-Moote*, that is, the Assembly of the wise men and Sages of the Land.

But this word Parliament is used in a double sense.

1. *Strictly*, as it includes the *Legislative Power* of England, as when we say—*An Act of Parliament*; and in this Acceptation, it necessarily includes the King, the Lords, and the Commons, each of which have a *Negative Voice* in making Laws, and without their joint Consent no new Laws can pass, that be obligatory to the Subject.

2. *Vulgarly*, the word is used for the *Two Houses*, the Lords and Commons, as when we say, the King will call a *Parliament*, his Majesty has *Dissolved his Parliament*, &c.

The Lords of Parliament are divided into two sorts, *viz.* *Spiritual*, that is to say the Bishops (who sit there in respect of their *Baronies*) parcel of their Bishopricks

Bishopricks which they hold in their Politick Capacity, and Temporal.

The Commons are likewise divided into three Classes or parts, viz, *Knights or Representatives of the Shires or Counties*; where note, that though the Writ require two *Knights* to be chosen, and that they are called *Knights*, yet there is no necessity that they should actually have the degree of Knighthood, provided they be but Gentlemen; for the Statute 23 Hen. 6. cap. 15: hath these words, *That the Knights of the Shires for the Parliament hereafter to be chosen, shall be notable Knights of the same Counties for which they shall be chosen, OR OTHERWISE such Notable Esquires or Gentlemen born of the same Counties, as shall be able to be Knights, and no man to be such Knight which standeth in the degree of a Freeman and under.*

Secondly, Citizens chosen to Represent Cities.

Thirdly, Burgesses, that is to say, those that are chosen out of Boroughs.

Note, that the difference between a City and a Borough is this, a City is a Borough Incorporate, which is or has within time of Memory been an Episcopal See, or had a Bishop; and this (altho the Bishoprick be Dissolved, as Westminster having heretofore a Bishop, though none now) still remains a City. Cook 1. Instit. Sect. 164. Boroughs are Towns Incorporated, but such as never had any Bishops.

Of the Three Estates in Parliament.

There has been a great debate about the Three Estates, some zealously pleading, That the Bishops are one of the three Estates of the Realm, and the Lords Temporal a Second, and the Commons-house the Third, and the King over all as a Transcendent by himself. Others as stiffly deny this, and assign

the King (as he his the Head of the Common Wealth) to be the *first Estate*, *the Lords*, as well *Spiritual* as *Temporal* jointly, to be the *Second*; and the *Commons-House* the *Third*.

Non opis est nostræ tantas Componere Lites.

We shall not presume to undertake a decision of this arduous Controversy, but in our poor opinion the matter seems to appear more difficult than really it is, by means that the contending Parties do not first plainly set down what it is they severally mean by the word *Estate*. Which may be taken, 1. For a *rank, degree*, or Condition of Persons considered by themselves, different in some notable Respects from others wherewith they may be compared. And in this respect *my Lords the Bishops* may very properly be said to be an *Estate*, or one of the Estates of the Realm, for then there will be several *Estates*, above the number of *three*, for so in the House of Commons there may be said to be three Estates, *viz. Knights, Citizens and Burgeffes*. And heretofore in the days of Popery, when there were 26 Abbots and Priors, that held *per Baroniam* too, as well as the *Bishops*, called to the Parliament, and sat in the Lords Houie, [see *Fullers Church History*, Lib. 6. 292.] Whether they being *Religious* and Monastical Persons, whereas the *Bishops* were *Seculars* (no small difference in their account) might not as well claim to be a *distinct Estate* by themselves, as now the *Bishops* do, may be a question.

But secondly, When we spake of three Estates in the Constitution of our *English Government*, 'tis most natural to mean and intend *such a poize in the Balance*, or such an *Order or State*, as hath a *Negative Voice* in the *Legislative Power*: For as the *King* and *Commons* excluding the *Lords*, so neither the *King* and *Lords* excluding the *Commons*; much less the *Lords* and *Commons* excluding the *King*, can make any Law; but this glorious *Triplicity* must be in

in mutual Conjunction, and then from their united Influences spring our happy Laws. But in this sense the Lords Spiritual by themselves have no pretence to be a *distinct Estate*: That is, they have by themselves no *Negative Voice*, (which I conceive the proper Characteristick or *essential Mark* of each of the three *Estates*;) For suppose a *Bill* pass the Commons, and being brought into the Lords House, all the 26 *Bishops* should be against it, and some of the *Temporal Lords*, yet if the other Temporal Lords be more in number than the Bishops, and those that side with them, the Bill shall pass as the Act of the *whole house*; and if his Majesty please to give it his *Royal Assent*, is undoubted Law. Which demonstrates the Bishops have of themselves *no Negative Voice*, and consequently are none of the *three Estates* of the Realm. But if any will have them called an *Estate* and mean something else by it, if he please to explain his Notion, 'tis like I shall not contend with him about a fiddle faddle word.

Touching the Power of the Parliament.

THE Jurisdiction of this Court (saith *Cook*, 1 *Instit. Sect.* 164.) is so Transcendent that it maketh, Inlargeth, Diminisheth, Abrogateth, Repealeth, and reviveth Laws, Statutes, Acts and Ordinances concerning matters Ecclesiastical, Civil, Martial, Marine, Capital, Criminal and common. And 4 *Instit. Fol.* 36. The Power and Jurisdiction of the Parliament for making of Laws, in proceeding by Bill, is so transcendent and absolute as it cannot be confined either for *Causes* or *Persons* within any bound. Of this Court it is truly said — *Si Antiquitatem spectes est vetustissima, si Dignitatem, est Honoratissima, si Jurisdictionem, est capacissima*; if you regard its Original, it is most Antient; if its Dignity, it is most Honourable; if its Jurisdiction, it is most Capacious.

Sir Thomas Smith a great Statesman, and in high esteem and place under Queen Elizabeth, in his Treatise, *de Republica Anglorum*, L. 2. Ca. 2. gives this Character of this supream Court—*In Comitibus Parliamentariis, posita est omnis Augusta, absolutæque potestatis vis, veteres leges iubent esse irritas, novas inducunt; Presentibus juxta ac futuris modum constituent; Jura & possessiones hominum privatorum commutant, Spuriis natalibus restituunt, cultum divinum sanctionibus corroborant; Pondera & mensuras variant; JUS IN REGNO SUCCEDENDI PRESCRIBUNT, &c.* The most high and absolute power of the Realm of England, consisteth in the Parliament; for the Parliament abrogateth old Laws, maketh new, giveth order for things past, and for things hereafter to be followed, changeth the rights and possessions of private men; Legitimateth Bastards, Corroborates Religion with Civil Sanctions, Alters weights and Measures; **PRESCRIBES THE RIGHT OF SUCCESSION TO THE CROWN**, defines doubtful Rights where there is no Law already made, Appointeth Subsidies, Taxes and Impositions, giveth most Free pardons, restoreth in Blood and Name, &c.

As for the power of Parliaments over both Statute and Common Law, take it in the Accurate and Significant words of a Parliament, *viz.* the Statute, of 25 Hen. 8. Ca. 21, as follows,—*Whereas this Realm Recognizing no superiour under God, but the King, hath been and is free from Subjection to any mans Laws but only to such as have been devised, made, and ordained within this Realm, for the wealth thereof, or to such other as the people of this Realm have taken at their free Liberty by their own consent to be used amongst them, and have bound themselves by long use and Custome to the observance of the same; not to the observance of the Laws of any Forreign Prince, Potentate or Prelate, but as—to the accustomed and Ancient*

Ancient Laws of this Realm, originally established as Laws of the same by the said Sufferance, Consents and Custom, and none otherwise. It standeth therefore with natural Equity and good Reason, that all and every such Laws Humane made within this Realm or induced into this Realm, by the said Sufferance Consents and Custom, the King and the Lords Spiritual and Temporal and Commons Representing the whole State of the Realm, in the most High Court of Parliament, have full Power and Authority to dispense with those and all other Humane Laws of the Realm, and with every one of them, as the quality of the Persons and matter shall require. And also the said Laws and every of them to abrogate, annull, amplify or diminish, as to the King, Nobles, and Commons of the Realm, present in Parliament, shall seem most meet and convenient for the Wealth of the Realm.

Thus far that notable Statute, which in truth is only Declarative and in Affirmance of the Ancient Common Law of England.

The particular Business of Parliaments.

BY what hath been said, you may perceive the work of an English Parliament is not (as some would have it,) only to be Keys to unlock the peoples Purses. That is but one part, and perhaps one of the least parts too, of their Office. They are to propose new Laws that are wanting for general good, and to press the Abrogation of Laws in being, when the Execution of them is found prejudicial or dangerous to the publick. They are to provide for Religion, and the Safety and Honour of the Nation, they have a power (as you have heard from Sir Thomas Smith,) to order the Right to the Crown (understand all this with the Kings consent) and they have

have very frequently undertaken and actually Limited the same, contrary to and different from the Common Line of Succession. Nay by the Statute of the 13 Eliz. Cap. 13. It is expressly Enacted, That if any Person shall in any wise hold and affirm or maintain, that the Queen with and by the Parliament of England is not able to make Laws and Statutes of sufficient force and validity to Limit and bind the Crown of this Realm, and the Descent, Limitation Inheritance and Government thereof, or that this present Statute, or any part thereof, or any other Statute to be made by the Authority of the Parliament of England, with the Royal Assent for Limiting the Crown, is not, are not, or shall not, or ought not to be for ever of good and sufficient Force and validity to bind, limit, restrain and Govern all Persons, their Rights and Titles, that in any wise may or might claim any Interest or Possibility in or to the Crown of England, in Possession Remainder, Inheritance, Succession or otherwise howsoever, and all other Persons whatsoever, every Person so holding affirming or maintaining during the Life of the Queen shall be adjudged an high Traitor, and suffer and forfeit as in Cases of High Treason is accustomed, and every Person so holding affirming or maintaining after the decease of our said Sovereign Lady shall forfeit all his Good and Chattels.

Which Clause and last mentioned Penalty is to this Day in force, and ought to be considered by any who shall now pretend that an Act of Parliament cannot dispose of the Succession.

As for the Right of making War and Peace the same is granted to be part of the High Prerogatives of our Kings, yet the wisest of our Monarchs have very rarely entered into any War without the consent of Parliaments; for 1. Who could give them better

better Counsel in such a difficult Affair? 2. The People would more readily expose their Persons in such a War, the Justice and Expediency whereof was approved by their Representatives. 3. The King from thence might more certainly promise himself supplies of Money to carry on the same.

But nothing is more properly the work of a Parliament than to redress Grievances. To take notice of Monopolies and oppressions, to Curb the Exorbitances of pernicious Favourites, and ill Ministers of State. To punish such mighty Delinquents as look upon themselves too big for the ordinary reach of Justice, to inspect the Conduct of such as are intrusted with Administration of the Laws, or disposal of the publick Treasure of the Nation: All Crimes of these and the like kinds are publick Nuisances, common mischiefs, and wound the whole Body politick in a vital part, and can scarce at all be found out or Redressed (by reason of the power and Influence of the Offenders) but in this great and awful Senate, before whom the haughtiest Criminals tremble; and it has been observed that they scarce ever Prosecuted any (though never so great, or highly in favour at Court) but sooner or later they hit him, and it proved his Ruine. Take a few examples. King Edw. the second dotes upon Pierce Gaveston (a French Gentleman) he wastes the Kings Treasures, has undeserv'd Honours conferred on him, affronts the ancient Nobility. The Parliament in the beinning of the Kings Reign Complains of him, he is banisht into Ireland: The King afterwards calls him home, and marries him to the Earl of Glocesters Sister, the Lords complain again so effectually, that the King not only consents to his second Banishment, but that if ever he returned or were found in the Kingdom, he should be hild and proceeded against as an Enemy

my to the State. Yet back he comes, and is received once more by the King as an *Angel*, who carries him with him into the North, and hearing the Lords were in Arms to bring the said *Gaveston* to Justice, plants him for safety in *Scarborough Castle*, which being taken, his Head was *Chopt off*.

In King *Richard* the Seconds time, most of the Judges of *England* to gratifie certain corrupt and pernicious Favourites about the King, being sent for to *Nottingham*, were by Perswasions and Menaces prevailed with to give false and Illegal Resolutions to certain questions proposed to them, declaring certain matters to be Treason which in truth were not so: For which in the next Parliament they were called to Account, and Attainted; and Sir *Robert Tresilian* Lord Chief Justice of *England*, was drawn from the *Tower* through *London* to *Tyburn*, and there Hanged: As likewise was *Blake* one of the Kings Council, and *Uske* the Under-Sheriff of *Middlesex*, who was to pack a Jury to serve the present Turn, against certain Innocent Lords and others, whom they intended to have had taken off; and five more of the Judges were Banisht, and their Lands and Goods forfeited. And the Archbishop of *York*, the Duke of *Ireland* and the Earl of *Suffolk*, three of the Kings Evil Councillors, were forced to fly, and died miserable Fugitives in Forreign Parts.

In the beginning of King *H.* the 8ths Reign, Sir *Richard Empson* Knight, *Edmund Dudley* one of the Barons of the Exchequer, having by colour of an Act of Parliament to try People for several Offences without Furies, committed great oppressions, were proceeded against in Parliament and lost their Heads.

In the 19 Year of the Reign of King *James* at a Parliament holden at *Westminster* there were shewn (saith *Bakers Chron. Fo. 418.*) two great Examples of Justice; which for future Terror, are not unfit

to

to be here related; one upon Sir Giles Mompesson, a Gentleman otherwise of Good parts; but for practising sundry abuses in erecting and setting up new Inns and Ale-houses and exacting great Summes of Money of people, by pretence of Letters Patents granted to him for that purpose, was sentenced to be degraded from his Knighthood, and disabled to Bear any Office in the Common-Wealth, though he avoided the Execution by Flying the Land; But upon Sir Francis Mitchel, a Justice of Peace of *Middlesex*, and one of the Chief Agents, the sentence of Degradation was Executed, and he made to ride with his face to the Horse tail through the City of London. The other Example was of Sir Francis Bacon, Viscount St. Albans, Lord Chancellour of *England*, who for *Bribery* was put from his place, and Committed to the Tower.

In King *Charles* the firsts time, most of the Judges that had given their opinions contrary to Law in the Case of *Ship-Money*, were call'd to Account, and forced to Fly for the same: And in the 19th year of our present Sovereign, the Earl of *Clarendon*, Lord Chancellour of *England*, being questioned in Parliament and retiring thereupon beyond the Seas, was by a special Act Banished and Disabled. In a word it was well and wisely said of that excellent Statesman, Sir William Cecil Lord Burleigh, and High Treasurer of *England*, That he knew not what an Act of Parliament might not doe; which Apothegm was approved by King *James*, and alleadged (as I remember) in one of his published Speeches.

And as the Jurisdiction of this Court is so transcendent, so the Rules and Methods of Proceedings there, are different from those of other Courts. For (saith Cook 4. Instit. fo. 15.) As every Court of Justice hath Laws and Customs for its Direction, some by the Common Law, some by the Civil and Canon Law, some by Peculiar Laws and Customs, &c. So the High Court

Court of Parliament suis propriis Legibus & Consuetudinibus Subsistit, Subsists by it's own Peculiar Laws and Customs. It is, Lex & Consuetudo Parliamenti, the Law and Custom of Parliament, that all weighty matters in any Parliament moved concerning the Peers, or Commons in Parliament assembled, ought to be determined, adjudged and discussed by the Course of the Parliament, and not by the Civil Law, nor yet by the Common Laws of this Realm used in more Inferiour Courts. Which was so declared to be Secundum Legem & Consuetudinem Parliamenti, according to the Law and Custom of Parliament, concerning the Peers of the Realm, by the King, and all the Lords Spiritual and Temporal, and the like pari ratione (for the same reason) is for the Commons, for any thing moved or done in the House of Commons: and the rather, for that by another Law and Custom of Parliament, the King cannot take notice of any thing said or done in the House of Commons, but by the Report of the House of Commons; and every Member of the Parliament hath a Judicial place. and can be no Witn^{ss}. And this is the Reason that Judges ought not to give any opinion of a Matter of Parliament, because it is not to be decided by the Common Laws, but Secundum Legem & Consuetudinem Parliamenti, according to the Law and Custom of Parliament: And so the Judges in diverse Parliaments have confessed. And some hold, that every offence Committed in any Court punishable by that Court, must be punished (proceeding Criminally) in the same Court, or in some higher, and not any Inferiour Court, and the Court of Parliament hath no higher.— Thus Cook.

Great complaints have been made about a late House of Commons sending for some Persons into Custody by their Serjeant at Arms; but certainly they did no more therein, than what their Predecessors have often done; every Court must be supposed Armed with a power to defend it self from Affronts and Insolencies;

In

In all Ages when the House has appointed particular Committees, hath it not been usual to order that they shall be impower'd to *send for Papers, Persons, and Records*? But to bring Men to a *sober Consideration* of their Duty and *Danger*, I shall give a few Instances, besides those before mentioned, of what the House of Commons hath done in former Ages.

1. *Anno 20. Jacobi*, Doctor *Harris* Minister of *Bletchingly* in *Surry*, for misbehaving himself by *Preaching* and otherwise, about Election of Members of Parliament, upon complaint, was called to the Bar of the House of Commons, and there as a *Delinquent on his Knees*, had Judgment to confess his fault *there*, and in the *Countrey*, in the *Pulpit* of his Parish Church, on Sunday before Sermon.

2. *Anno 21 Jacobi*, *Ingrey* under Sheriff of *Cambridge-shire*, for refusing the *Poll upon the promise* of *Sir Thomas Steward* to defend him therein, kneeling at the Bar, received his Judgment to stand *Committed to the Serjeant at Arms*, and to make Submission at the Bar, and Acknowledge his offence there, and to make a *farther Submission* openly at the Quarter Sessions, and there also to acknowledge his fault.

3. *Anno 20 Jacobi*, the Mayor of *Arundel*, for misbehaving himself in an Election, by putting the Town to a great deal of Charge, not giving a due and General warning, but *Packing* a number of Electors, was sent for by Warrant, and after ordered to pay all the Charge, and the House appointed certain persons to adjust the Charges.

4. And 3 *Car. 1.* *Sir William Wray* and others, Deputy Lieutenants of *Cornwal*, for assuming to themselves a power to *make whom they pleas'd Knights*, and defaming those Gentlemen that then stood to be Chosen, sending up and down the Countrey *Letters* for the *Trained Bands* to appear at the Day of Election, and *Menacing* the Countrey under the
Title

Title of His Majesties pleasure; had Judgment given upon them, to be committed to the Tower. 2. To make Recognition of their Offence at the Bar of the House upon their Knees, which was done. 3. To make a Recognition and submission at the Assizes in Cornwall, in a Form drawn by a Committee.

5. But most remarkable are the Proceedings in the same Parliament Anno 1628. against Doctor Manwaring, who being there charged with Preaching and Publishing Offensive Sermons, and the same referred to a Committee; they brought in their Report, which was delivered to the House with this Speech, as I find it in Doctor Fullers Church-History, L. II. Fo. 129.

Mr. Speaker,

I am to deliver from the Sub-Committee, a Charge against Mr. Manwaring, a Preacher and Doctor of Divinity, but a Man so Criminous, that he hath turned his Titles into Accusations; for the better they are, the worse is he, that hath dishonoured them. Here is a great Charge that lies upon him, it is great in it self, and great because it hath many great Charges in it: Serpens qui Serpentem Devorat, fit Draco; his Charge having digested many Charges into it, is become a Monster of Charges. The main and great one is this; a Plot and Policy, to alter and subvert the Frame and Fabrick of this State and Commonwealth. This is the great one, and it hath others in it, that gains it more Greatness: For to this end, he labours to infuse into the Conscience of his Majesty the perswasion of a Power not bounding it self with Laws, which King James of famous memory, calls in his Speech in Parliament, 1619. Tyranny, yea, Tyranny accompanied with Perjury.

2. He endeavours to perswade the Consciences of the Subjects, That they are Bound to Obey Illegal Commands; yea, he Damns them for not Obeying them.

3. He

3. He Robs the Subjects of the Property of their Goods.

4. He Brands them that will not lose this Property with most Scandalous and Odious Titles, to make them Hateful both to Prince and People, so to set a Division between the Head and Members, and between the Members themselves.

5. To the same end (not much unlike to Faux and his Fellows) he seeks to Blow up Parliaments and Parliamentary-Power. These five being duly viewed, will appear to be so many Charges, and withal they make up the main and great Charge, a mischievous Plot to alter and subvert the Frame and Government of this State and Common-wealth. And now that you may be sure that Mr. Manwaring, though he leave us no propriety in our Goods, yet he hath an absolute propriety in his Charge; Audite ipsam Beluam, hear Mr. Manwaring by his own words making up his own Charge.

Here he produced the Books, particularly Insisting on p. 19, 29, and 30. in the first Sermon, p. 35, 46, and 48. in the second Sermon; all which passages he heightened with much Eloquence and Acrimony; thus concluding his Speech, *I have shewed you an Evil tree that bringeth forth Evil fruit; and now it rests with you to determine, whether the following Sentence shall follow, Cut it down, and cast it into the Fire.*

Four days after the Parliament proceeded to his Censure, consisting of eight particulars, it being ordered by the House of Lords against him, as followeth.

1. To be Imprisoned during the pleasure of the House.

2. To be Fined a thousand Pounds.

3. To make his Submission at the Bar in this House, and in the House of Commons, at the Bar there, in *Verbis Conceptis*, a set form of words framed by a Committee of this house.

4. To

4. To be *Suspended* from his Ministerial Function three Years, and in the mean time a sufficient Preaching-man to be provided out of the profits of his Living, and this to be left to be performed by the Ecclesiastical Court.

5. To be Disabled for ever hereafter from *Preaching at Court*.

6. To be for ever Disabled of having any *Ecclesiastical Dignity* in the Church of England.

7. To be Uncapable of any *Secular Office* or *Preferment*.

8. That his Books are worthy to be *Burned*, and his Majesty to be moved, that it may be so in *London*, and both the *Universities*.

And accordingly he made his humble Submission at both the *Bars* in Parliament, on the Three and twentieth of *June* following, and on his Knees, before both Houses, submitted himself, with outward Expressions of Sorrow, as followeth.

I do here in all sorrow of Heart, and true Repentance, acknowledge those many Errors and Indiscretions which I have committed in Preaching and Publishing the two Sermons of mine, which I called Religion and Allegiance, and my great fault in falling upon this Theam again, and handling the same rashly, scandalously and undavisedly in my own Parish Church in St. Giles in the Fields, the Fourth of May last past. I humbly acknowledge these three Sermons to have been full of Dangerous passages and Inferences, and scandalous Aspersions, in most part of them. And I do Humbly acknowledge the Just proceedings of this Honourable House against me, and the Just Sentence and Judgement pass'd upon me for my great Offence. And I do from the bottom of my Heart crave Pardon of God, the King, and this Honourable House, and the Commonwealth in general, and those worthy Persons Adjudged to be reflected upon by me in particulnr, for these great Offences and Errors.

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The truth is, 'tis this *High Court* of Parliament, that only can hinder the *Subject* from being given up as a Prey to the *Arbitrary Pleasure* not only of the Prince if he should attempt it, but (which is Ten times worse) to the unreasonable passions and lusts of *Favourites*, cheif Ministers, and Women; when otherwise instead of a *Monarch* (who as sometimes it may happen shall Govern but in name) we might be ruled like the *Antient French* by an insolent *Major of the Pallace*, who will be sure to mind the private interest of himself and Family more than that of the Prince or the *Publick good*; Or like the *Turkish Empire* under a *Weak Grand Seignior*, by the *Prevailing Concubine* of the *Seraglio*, who is perhaps her self managed by no higher dictates than that of her *chief Eunuch* or *She-Slave*. It is strange therefore to observe the *Impotent Ambition* of some Men (and such as, with Shame let us speak it, boast themselves *English-men* too) who (provided they may trample upon and domineer over their Inferiors) care not how much their *Superiors* do the like over them. Their Souls (like most insolent Mens) being mean enough to submit thereunto; or who can enough deplore and abhor the ignorance and stupidity of some *lazy insignificant Gentlemen*, who care not how things go, provided they may enjoy their *Hawks, Hounds, and Bowling-Green Meetings*; whilst not only for *Divinity*, but *Politicks* too, they are Govern'd by their more *Impertinent Chaplain*, or the *Parson* of their Parish. Now nothing is more obvious than the designs of some *idle, Covetous, Sycophant Clergy-men*, who like *Ivy*, though it cannot grow without the support of the *Oak* and yet will destroy it at last, do in private Parlours over the *Glass*, whilst *Healts* go round, as well as in their *Pulpits* over their *Cushions*, set up *Absolute Monarchy* to be *Jure Divino*, declaiming against the unreasonable stubbornness of any Parliament that will not give away the *Peoples Money*, and submit

mit themselves to be *Fleec'd*, as often as the *prime Minister* or Favourite think fit, they cry up the Prince like an Angel so long as he will be their *Executioner* to Whip, Imprison, or hang all that will not *truckle* to their own Pride and Avarice; or refuse to give up their *Souls* once again to be managed by an *Implicite Faith*, whereby in the mean while these *Huffish Sir Johns* might not be troubled with those uneasy Tasks of *Studying, Preaching, &c.* but may have nothing else to do, but live at ease, keep their *Coach* and *Horses*, with a *silly Curate* to do all the *Drudgery*; Whilst they themselves are making *Addresses* above, by Flattering and Informing at some great *Noblemans* or *Bishops Table*, and railing against the *Whiggs* and *Fanaticks*, and speaking a good word for *Popery by the By*; Or else if their parts reach so high, by some *Sycophant Pamphlet* or *Sermon* against the Government *Establisht by Law*; They teach that men have no property either in their *Lives* or *Goods*, but only during the *Princes pleasure, &c.* If there be not such a parcel of Things as these that call themselves *Divines*, then *no Body* is concerned in this *Character*; but if there be, they are the worst of men, and ought not only to be exposed, but severely punished.

Therefore since at present we live under so happy a Government, where being securely Landed our selves, we behold the Shipwrack of our Neighbours, and since (notwithstanding the goodness of our Sovereign King *Charles the Second, whom God preserve*) who has declared that he desires nothing less than the *Alteration* or *subversion* of that Government (which as well by his *Coronation Oath*, as by his own *Lenity* and good nature, he thinks himself obliged to observe) yet there are some, who for their own private ends, endeavour their utmost to remove our ancient *Land-marks*, Introducing *Popery* and *Slavery* amongst us; It is therefore the indispensable *Interest* and *Duty* of all true

true *English-men* to maintain these Priviledges conveyed from their Ancestors through so many Generations inviolable, upon which all our (Earthly) and in a great measure our *Spiritnal*) Happiness, safety, and well-being depends. Nor can any Man in his senses but acknowledge that the only *right way* to attain that end, is to look well to the *Means*, and that is by taking due care what Persons they Choose for their Representatives, with whom they must trust their Estates, Lives, and Liberties.

Now this Government of a Prince by and with Parliaments, whenever the Condition and Necessities of the State require them, however according to it's primitive Institution it was the best of all others, yet as well in that as in Christianity it self, there have been found out wayes of Corruption, and that is, when either they sit too long, or too seldom, or are too frequently dissolved; too frequent Dissolutions being no less Dangerous to the Subject, than too long Sessions. Nevertheless it may be in the Electors power to avoid the Inconveniences of both, and that is by making a good Choice.

Whereas if the Countrey People will sell all that they have for a little roast Beef, a Glass of Sack, & a pot of Ale, Choosing him that will give them most Drink to Day, though they know him to be a Person who will sell both their Religion, Liberties and Fortunes to Morrow, then frequent Dissolutions will of necessity ruine us, and utterly debauch this Excellent Constitution; for the honest Countrey Gentleman designing no other private advantage but the true service of his King and Country, hath no reason, nor is he able, once in half a Year to spend 4 or 500 Pound, only to purchase a place full of Labour, Charge, trouble and Danger, without any profit to himself, only to serve those who put him to such an unkind Expence. And when honest Loyal Gentlemen are thus discouraged, if this *Sottish* humour amongst the Electors continue,

the

the Papist, and their Faction, or necessitous Persons of prostituted Consciences, will carry their Votes; for they can afford to buy them at large rates, being resolved to repay themselves, though with the ruine of the Nation.

This is no vain surmize or idle speculation, but the very truth of the Case; and the meanest Countrey Man that has Eyes in his Head, and will use them, can not but see it: for did you ever know a Coachman or Groom buy his place, unless he designed to rob his Masters Bin? Therefore whoever you put to charge in your Elections, blame him not, if he makes Money again of what he bought, and lays out his Vote in the House, not for your Good and that of the publick, but that way as will best please the Ministers of State, that so he himself may get a good place, or preferment, or Title of Honour by the Bargain. I say though he himself be a base Wretch for so doing, yet *You* cannot blame him, since you did not lend him your Trust, but sold it him, and what a Man hath purchased with his own Money, he may lawfully sell again.

Therefore that Man who does wilfully give his Voice for a Knave or Fool, does his endeavour to ruine both his Country, and himself and his Posterity, and to be as bad or worse than the Person he chooseth; and if the greater part of the House happen to be Wiser or Honester, it is no thanks to him; he did as much as he could to debauch it; and therefore for his part, if none else were concerned with him, it were no matter if he were forthwith made a Slave, and his Children Perpetual Vassals.

The before mentioned old Lord Treasurer Burleigh (who is thought to have been the greatest Statesman that ever this Nation bred) did frequently deliver as a Maxime, or rather as a Prophecy, That England can hardly be ruined, unless it be by her own Parliaments; undoubtedly foreseeing that other oppressions, as being wrought by violence, might perhaps by violence be
in

in time shaken off again; whereas when in a Parliamentary way we are undone by a Law, that can never be revert but by a down-right Rebellion, because the parties advantag'd by that Law will never agree to the repealing of it; and a Rebellion is both so dangerous, and of so black a Character, as men either rich or conscientious, will not engage therein; and therefore no publick mischief is so irrecoverable as that which is grown into a Law, and nothing, you know, can become so, but what is Imposed upon you by Parliament. Such is the happy frame of your Government, so prudently and so strong have your Ancestors secured Property and Liberty, (rescued by inches out of the hands of encroaching violence) that you cannot be enslaved but with chains of your own making, for as you are never undone till you are undone by Law, so you can never be undone by a Law, till you chuse the undoing Legislators; and may not your enemies add Scorn to their Cruelty, and pretend Justice for both, when they can plead they had never trampled on your heads, had not you laid them on the Ground?

From what has been said, it evidently appears of what vast importance it is at all times, whenever his Majesty shall be pleas'd to issue out his Writs for a Parliament, to chuse (as much as in us lies) a good house of Commons, as we tender our Religion, Liberties, Estates and Posterity; upon our well or ill chusing, depends our well or ill being; 'tis here as in marriage or war, there is no room for second Errors, one Act may ruine a Nation beyond retrieve.

Besides, they whom you chuse will represent the qualities as well as the persons, and if you send up a false glass, it will represent you with an ugly face; you have hitherto had the repute of an antient and grave people, but if you chuse raw Saplings, green heads, unexperienced children, the world will Judge of you, as they once did of the Grecians, that you were either

always children, or are grown twice so; you have long been a famous Religious Protestant Nation, but if you chuse debauched swearing Atheists, men of no Religion, or such as are meer formalists, or inclinable to Popery, what can the world think but that the Nation has lost its sense of Religion, and is content to be led back into the *Egyptian* darkness of *Romish* Fopperies: you have formerly had the Character of a sober temperate Nation, but if you chuse Drunkards for your Trustees, or give your voices for those that gorge you most with liquor, what can be supposed but that you are already *Drunk* with folly, and Just Reeling into Slavery.

Some Directions concerning the Choice of Members to serve in Parliament, and the Qualifications that render a Gentleman fit or unfit, worthy or undeserving of your Voices for so great a Trust.

AVOID all such as hold any Office of Considerable value during pleasure, they being subject to be Over-awed. For altho a man wish well to his Countrey, and in the Betraying thereof, knows that at the long run he mischiefs and enslaves his Posterity, if not himself, yet the narrowness of mens minds is such, as makes them more tenderly apprehend a small present damage, than a far greater hereafter. Such men must of necessity be under a great Temptation and Distraction, when their Consciences and Interest look different ways. For to say truth, such an Office is but a softer word for a *Pension*; Therefore since these men know before hand the Inconveniences that attend the Trust of a Member of Parliament faithfully discharged, 'tis very suspicious and reflecting upon their honesty, if any such stand for

for it; And I think we are bound in Charity, nor can we do them a greater Courtesy, than to Answer their Petition in the Lords Prayer—*Not to lead them into Temptation.*

2. Suspect *all those* (especially if they are men of Ill Repute) *who in their Profession, or near Relations, have dependency upon the Court.* For though to be the Kings Servant is no Bar from being a Parliament-man, or from serving his Countrey honestly in that Station, and no doubt several of them have at divers times well discharged the same, yet frequently such persons (unworthily) guessing at their Prince by themselves, are apt to Vote right or wrong, as they imagine will most please the Prerogative Party, and 'tis an hard matter for a Courtier to please that great (perhaps corrupt) Minister who supports him, and those whom he Represents, at the same time: And if he endeavours to oblige both, he becomes such an uncertain Weathercock, as most commonly he pleases neither. And therefore the most prudent and honestest of the Courtiers are always observed to decline being Parliament men, for this very reason.

3. Meddle not with *such as have been or are like to prove Pensioners, or receive Salaries for secret Services.* I know they would now Brazen it out, That there were no such men, no such practices. But the contrary is notorious; did not the House of Commons last Westminster-Parliament take the thing into Examination? nay did not Sir S. F. by his memory (without the books, which for some reasons were refused to be brought in) name about 30 of them, and the respective Sums yearly paid to each? and would not many more have been discovered, and the whole knot of them severely and exemplarily punished, if that Parliament had a little longer Continued? Now there is none more implacably your Enemy, then that person whose Interest

is to destroy you; that must neither eat nor drink, except you starve; that must go in Rags, except you go naked; are taught to Fleece you, that they may keep themselves warm. To prevent this, avoid not only all former Pensioners, but such other as may be in danger to become so; Therefore meddle not with men of necessitous Fortunes, or much in Debt. The Representative of a Nation ought to consist of the most wise, Wealthy, sober, and courageous of the people, not men of mean Spirits and little figure, and sordid passions, that would sell the Interest of the People that chose them to advance their own, or be at the beck of some great man, in hope of a lift to a good Imploy. Those that have fair Estates, have in a manner given Hostages to their Country, and must be Errant Fools before they can play the Knave with you. But what cares the needy Passenger if the Ship perish, if he can but save himself in the long Boat, or get some Booty by the Wreck? What Protection do you expect from them, who cannot shew their Faces with confidence without a Protection, either in or out of Parliament? Who are no less apprehensive of a Bayliff, than of the growing greatness of the French; and dread not Popery half so much as an Out-Lawry? Will you secure them within the Walls of the house of Commons, who were better secured within the Walls of a Common Goal? Who can never pay their debts Contracted by their Prodigality, but out of your Purses; and must run you in, to get themselves out of their Mortgages? These mens fear of being dis-solved makes them submit to any thing, rather than be left to the unmerciful Rage of their hungry Creditors, who have so long fasted for their money. For all such persons (though some of them may be lookt upon as honest fair-Conditioned Gentlemen and good House-keepers,) are in danger of being Temp-
ted to repair the decays of their own private For-
tunes

tunes, by the Ruine of the Publick. Moreover the Choosing of such broken Fortunes, decays Trade, and ruins whole Families; insomuch that I have known it drive many men (contrary to their own Inclinations) to wish never to see Parliaments more in England. In a word, if Beggars ever come to be your Representatives, how can they Judge what is expedient for the Nation to spare, whose only Care is to get a piece of money to spend?

4. As you are not unadvisedly to Choose such as retain to the Court at home, so much less are you to Elect any such as have their dependance upon Foreign Princes or States, these are under strong obligations to see you ruined; for your own Reason will tell you, that no Forreign Power will prodigally throw away his Pistoles, where he expects not an Harvest answerable to his Seed. 'Tis possible this Caution may not be unnecessary, for 'tis more than suspected that there are some such degenerated Englishmen, who having forsaken the Interest of their Native Countrey, have sold themselves to an Outlandish Interest, that they may the better gratify their own Ambition, and those Potent Lusts which their own meaner Fortunes could not otherwise feed and satiate.

5. Be not over-fond to receive Bribes and Gratifications from persons that would fain make a prey of you, and by their purses, lavish treats, and entertainments would allure you to prostitute your voices for their Elections; you may be assured they would never bid so high for your Suffrages, but that they know where to make their Markets. Chuse the worthy unwilling person, before the complemental unworthy man, whose extraordinary forwardness prognosticates he seeks not your good, but his own, separate from the publick. Let us not play the fools or knaves to neglect or betray the Common Interest of our Country by a base Election, let neither Fear,

Flattery, nor *Gain Bias* us. Consider with your selves what losers you will be, if to laugh and be merry one day, the person you choose should give you and your children occasion to mourn for ever after.

— Say not he's but a single person, one man cannot do such hurt, — Silly men! what if all other places should be as bad as your selves? then all the house would be of a peice, and besides don't you know that sometimes a single man has carried a Vote, which perhaps was no less mischeivous than *Irretrievable*? think how Justly the gallant antient *Heathens* may upbraid this baseness of us Christians, when, as they sacrificed many of their children, nay and oftentimes their own Lives for the good of their Country, so on the contrary do we sacrifice or at least *Happ-Hazard* both our Religion, Lives, Children and Countrey for the *Swinish* pleasure of a day or two's debauchery.

6. Make not your *publick choice the Recompence of private Favours*, 'tis not pleasing a Neighbour, because rich and powerfull, but saving of *England* that you are to regard. Neither pay nor return private obligations at the cost of the Nation. Sir *John* is a pretty Gentleman, and treats people *Civilly*, and my *Landlord* is a good man, and has been kind, and Esquire such an one, is our next Justice of peace, but yet I will not give my voice contrary to my conscience, or have an hand in a choice that may ruine my Country, to gratify any or all of them. Let not such engagements put you upon dangerous Elections as you *Love the Liberties* and the Freedom of your Posterity. But tell them in this affair they must hold you excused, for that the weight of the matter will well bear it, this is your *Inheritance*; all may depend upon it; 'tis a more *Modest* request if they would desire you to give them that *Freehold and Estate*, * that qualifies you for an *Elector*, than to press you to be for a man that in your conscience you think *unfit*, or not so fit as his *Competitor*, for so weighty a Trust.

Trust. Men don't use to *Lend their Wives*, or give *their Children* to satisfy personal Kindnesses, nor ought you to make a *Swoop* of your Birthright (and that of your Posterities too) for a mess of pottage, a *Feast*, or a lusty *Drinking bout*; there can be no proportion here, and therefore none must take it ill, that you use your freedom about that which in its constitution is the great *Bulwark* of all your antient Liberties.

7. Have a care of *Ambitious men* and *non-Residents*, such as Live most about the Town, and not with *their Estates* in the Country. *These seek Honours and Preferments* above; and little or never embetter the Country with their expences or Hospitality, for they are too much for themselves, to Act vigorously for the advantage of their Country; or if in the house they do for a while *Swagger* a little, and *Speak* it briskly, 'tis only that the Court may take notice of them, and *take them off* by some preferment; and then these *false Patriots* shall be the only sticklers for *unbounded Prerogative*.

8. Be resolved (against all Temptations) to choose *no Minors*: What, will you be content with *sucking Statesmen*? and *Beard-less Politicians*? and *Rehearsers Counsellors*? then, expect, for well you deserve to be *lasht with Scorpions*: Can you Judge them fit to dispose of your Liberties, Lives Estates and Religion, who cannot legally dispose of their own Estates or themselves? What security can they give you, that they will not give away *yours and you*, whose Bond in the eye of the Law will not be taken for 40 s? but sure your own experience of what such *young Green Persons* have been and done in former Parliaments, hath I hope learned you sufficient wisdom, not to chuse the like again.

9. Elect no *prodigal or Voluptuous persons*, for besides that such are not regular enough to be *Law-makers*, they are commonly Idle, and though possibly they

may wish well to your Interest, yet they will rather lose it than their *Pleasures*, they will scarce leave one of their *Nightly Revellings* to give you their attendance and Service next day, and therefore they are not to be relied upon. And upon this occasion I shall borrow the words of an *Author* to whom I do not much desire to be beholden; *Some Senators are drawn from their duties by Pleasure; perhaps a party at Tennis, Bowles, Cards, a pack of Dogs, a Cock-Fight, or a Horse-match, a Comedy, a Good Fellow, or a Mistress. And while they are thus employed, the Vigilant faction steals a Vote that is worth a Kingdom.—Some again are so transported with the Vanity of Dress and Language, that rather than serve the publick with one hair amiss, or in one broken Period, they'll let the publick perish.* *Mallent Rempublicam turbari, quam capillos.* These, while their Country lies at Stake, are ordering of their heads, and Polishing the Phrase, shaping the parts of a Set-Speech, till it is too late to use it. Nothing methinks does less bescem a Grave Assembly, then this *Facultatula Loquendi*; this same *Rhetorical Twittle-twattle*; it spins out so much time in tedious Circumstance, that it makes a man e'en sick of a good Cause, and for the very form, prejudice the Reason of it.—Sloth and Neglect, are yet more dangerous in a Senator, in regard of Surprizes from the Faction, these think a wet day, or a cold morning, a sufficient discharge of their Attendance; and while they are taking t'other Napp, or t'other Bottle, the Monarch perhaps has lost his Crown, or the Subject his Liberty.

2. Avoid all those that play the Protestants in Design, and are indeed disguised Papists, ready to pull off their mask on the first opportunity, whenever time serves. You may know them by their swaggering for a Popish Successor to maintain the Protestant Religion, Their *Laughing at the Popish Plot*, and disgracing the Evidence of it, and at the same time

affirming

affirming (without any grounds) the *reality of a Presbyterian Plot*; their associating with known *Papists*, and winking at them, but eager heats to put the Laws in Execution with the utmost rigour upon Protestant Dissenters; These are men whose affection for the Protestant Interest, notwithstanding all their fair Speeches may justly be *question'd*, since their practice gives their words the *Lye*; nor will their large pretensions and seeming zeal for the Church of England, at all prevail with wise men; for we know the *Papists* themselves, when 'tis for their Interest, will pretend the same thing, and *speak fair of our Church*, and rail only upon the *Fanaticks*; when yet in their hearts, they hate our Church as much as they do any of the *Sects*; Observe all their *Pamphlets*, the noises against the Presbyterians and Dissenters, but 'tis with a design to destroy them first, and the Church of England afterwards; for when so great a body of Protestants are represented as *Disloyal and Dangerous*, and crushed and undone, the Church of England-men will be left alone, and then they hope to deal with them well enough; and that this is their aim, may be perceiv'd if you observe how zealous the *Papists* are to stir up Prosecution against the *Dissenters*, and none more Joyful when it goes on, &c. Now what's all this for? are they think you indeed and in earnest so very kind to the Church of England? for what acquaintance? No, no, 'tis all *Disimulation and Roguery*, a Design which they drive on first to *divide* and then to *ruine* us. Therefore beware how you chuse any such *Tools* as they make use of therein. The contrary, are men that bless God for the most happy *discovery* of the Hellish Popish Plot, and all their wicked *shams* ever since, and would have the bottom thereof fairly searcht into, and the *Traitors*, though never so great or potent, brought to *Condign punishment*, and in their Conversation zealously direct themselves in an Opposition to the *Papal Interest*, which indeed is a combination

against good Sense, Reason, and Conscience, and to Introduce a *blind Obedience* without (if not against) Conviction: And that Principle which Introduces *Implicite Faith and blind Obedience in Religion*, will also Introduce *Implicite Faith and blind Obedience in Government*, so that it shall be no more the *Law* in the one than in the other, but the will and power of the Superiour that shall be the *Rule and Bond* of our Subjection; this is that fatal mischief Popery brings with it to *Civil Society*, and for which all such Societies ought to beware of it and its friends and Abettors, which sure none can be, but such who are design'd for *Slaves* by *Nature* as well as *Fortune*, debauch'd lew'd *unthinking Animals*, properly enough called *Tories*; *Silly, Servile*, yet conceited and Cruel, *Creatures* altogether of an *Irish* understanding.

10. As for you *Citizens Burgeesses and Freemen* of Cities and Corporations in particular, I shall only say, That *whoever is not fit to be chosen Knight of the Shire, is likewise unfit to be chosen a Burgess*; Neither let the more specious pretences of any man that shall promise to build you a *Town-Hall*, or *Relieve you poor* with money, or out of his *Adjacent Woods*, or any such *Good-morrows*, deceive you; for if so, where in are you wiser than your *Horses*, whom you catch every day, and Clap a *Bridle* into their mouths, only by shewing them a few *Oats*, which they are never like to Eat? Even the very *Mice* are too wise to be taken by an *Old Bait*, but will first have the trap *few baited* before they'll meddle: And yet I have known a Corporation which has been taken *TWICE* by the same bait. But suppose these men do really perform what they promise, what Compensation is that, if the same men should lay a good *Swinging Tax* upon your Estates without any real cause? or should give up the very power you have of *Taxing yourselves*, or sending your *Representatives in Parliament*, (for one *bad Parliament* may ruine us) what good would

would the money for your Poor do in such a case, more than that when you are thereby reduced to beggary, you might perhaps yourselves (the Gentry of the Country having no reason to relieve you) be forc'd to come in for a *small share* of this their Hypocritical Charity? An excellent Reward for *Knaveish Folly*: Neither say—*Oh! this is but one man, and can have but one Vote, he will do our Town a great deal of good, and can do us but little hurt if he would, &c.* For, 1. (as I told you before) *one or two Voices* have sometimes carried a *Vote* of great Importance; 2. You know not what mischief your *bad example* may do in other Corporations, and if all should do so, what a miserable case would you be in? Since the *Voices of the Boroughs make two thirds of the House*. Lastly, no man can tell the Influence that *one running Talkative Ill-man* may get over the rest of the House, especially over those that weigh words more than Sense, or Reason, and the Interest of their Country.

Hitherto we have talked Negatives, and described such as are not fit to be Chosen; Now we came positively to set before you, who are fit for such a Trust, especially in such a dangerous Juncture as we are fallen into. In order to which we must consider for what ends they serve; and they are principally Two. The first is, the preservation of our Religion from Popery, the other is to preserve inviolable our Liberty and Property according to the known *Laws of the Land*, without any giving way unto or Introduction of that *Absolute and Arbitrary Rule* practiced in Foreign Countreys, which we are neither to imitate or regard—Therefore,

1. Take Care to Choose such as are well known to be men of good Consciences, fearing God, thoroughly Principled in the Protestant Religion, and of high Resolution to maintain it with their Lives and Fortunes.

And

And amongst these, rather cast your Favour upon them of *large Principles* (I mean in matter of meer opinion) such as will not sacrifice their Neighbours Property and Civil Rights to the frowardness of their own Party in Religion. *Narrow Souls*, that will own none but those that bear their own Image and superscription, will sooner raise Persecution at home, than secure us from Popery and Invasion from abroad. *The great Interest of England at this day, is, to Tolerate the Tollerable, to bear with the weak, to encourage the Conscientious, and to restrain none but such as would restrain all besides themselves.*

2. As we ought as near as we can possibly judge to Elect good Protestants towards God, and just towards men, yet since in this Corrupt Age wherein we Live, men are not so *spiritual* as they ought to be, it is not amiss to seek for those whose spiritual Interest is seconded by a *Temporal* one; For though men talk high, and keep a great Noise with Conscience and love to their Country, yet when you understand *Mankind* aright (not as it should be, but as it is, and I fear ever will be) then you will find that private Interest is the *string* in the Bears Nose, it is that *Governs the Beast*. And therefore the surest Champions for our Religion (*Ceteris Paribus*) against the Papacy are our *Abby Landed-men*, for notwithstanding the *Registred Dispensation* to King Henry the Eighth from the Pope for the seizing of those Monasteries and Lands, yet of late they pretend that the Pope had not Power to Alien them from the Church, so that the present Possessors can never trust or rely upon that, or any new promises or Actual Grants thereof, especally from him whose everlasting and declared Maxime it is--*Never to keep Faith with Hereticks*. Undoubtedly to make easy his ascent into the Saddle he will proffer many *Affurances* and Grants, but if these *Abby-Landed* men be not the most *filly* of all others, they will never believe him. For when he

is once firmly settled; then will he with his *Canon-Law Distinctions*, like Fire under Quicksilver, Evaporate away all his *Promises*, and violently Resume the Lands, glorying of his own *Bounty*, if he require not the mean *profits* ever since they have been sacrilegiously with-held from Holy Church.

3. Endeavour to Chuse men of *Wisdom* and *Courage*, who will not be *Hector*ed out of their Duties by the Frowns and Scowles of men: Never had you more need to pitch upon the old *English* Spirit, that durst be faithfull and just against all Temptations. What a degenerate Race have we known, that could never yet Resist *Smile* or *Frown*, but tamely sunk below their own Convictions, and knew the Evil, they did, yet durst not but Commit it?

4. Make it your business to Chuse such as are resolved to stand by and maintain the *power and privileges of Parliament* (for they are the Heart-strings of the Common-Wealth) together with the power and just Rights of the King, according to the Laws of the Kingdom, so as the one may not Entrench upon the other. And such as with a becoming true *English Courage* will Prosecute all Traitors, whether already Impeached, or to be Impeached; And to secure us from Popery hereafter, and to get removed all *Corrupt and Arbitrary Ministers of State*, and *wicked Judges*, and *stiflers* of the discovery of the Popish Plot; and *Suborners*, and vile Pamphleteers, that endeavour so industriously to Clear the Papists, and expose the Protestant Religion, and poison the People.

Lastly, Take particular notice of those who are *men of Industry and Improvement*; for such as are Ingenious and laborious to propagate the growth and advantage of their Country, will be very tender of yielding to any thing that may weaken or Impoverish it.

If you Conduct yourselves thus prudently, honestly and gallantly, in your *Choice*, without putting the
Gentlemen

Gentlemen whom you chuse to serve you, to charges, the consequence will be, that as you will be sure to have a good *Parliament* when ever His Majesty shall please to call one, and such as will be zealous for the safety of the Protestant Religion, and prosperity of the Nation, if they shall continue to *sit and Act*; so, on the other side; If they should be *Dissolv'd*, and never so many new Parliaments be called, yet you run no hazard, for the same *Candidates* will still be ready to serve you. And so we shall conclude our discourse of Parliaments, when I shall first have observ'd that antiently all *Freemen of England* (though not *Free-holders*) had a right to chuse their Representatives till the same was altered and limited by the following Statute, for the reasons therein mention'd.

The Statute Anno 8. Hen. 6. Cap. 7.

What sort of men shall be *Chusers*, and who shall be Chosen *Knights* of the Parliament.

ITem, *whereas the Elections of Knights of Shires to come to the Parliaments of our Lord the King, in many Counties of the Realm of England, have now of late been made by very great, Outragious and Excessive numbers of People, dwelling within the same Counties of the Realm of England, of the which most part was of people of small Substance, and of no value, whereof every one of them pretended a voice Equivalent, as to such Elections to be made, with the most worthy Knights and Esquires, dwelling within the same Counties, whereby Man Slaughter, Riots, Batteries, and Divisions among the Gentlemen, and other People of the same Counties shall very likely rise and be, unless convenient and due Remedy be,*
provided

provided in this behalf: (2) our Lord the King considering the premises, hath provided, ordained and stablished by Authority of this present Parliament, that the Knights of the Shires to be chosen within the said Realm of England to come to the Parliament of our Lord the King hereafter to be holden, shall be chosen in every County of the Realm of England, by People dwelling and resident in the same Counties, whereof every one of them shall have Land or Tenement, to the value of forty Shillings by the year, at the least, above all Charges, (3) and that they which shall be so chosen shall be dwelling and resident within the same Counties: (4) and such as have the greatest number of them that may expend forty shillings by the year and above, as afore is said, shall be returned by the Sheriffs of every County, Knights for Parliament, by Indentures sealed betwixt the said Sheriffs and the said Chusers so to be made: (5) and every Sheriff of the Realm of England, shall have power by the said authority to examine upon the Evangelists every such Chuser, how much he may expend by the year: (6) and if any Sheriff returned Knights to come to the Parliament, contrary to the said Ordinance, the Justices of Assizes in their Sessions of Assizes shall have power by the authority aforesaid thereof to enquire, (7) and if by inquest the same be found before the Justices and the Sheriff thereof be duly attainted, that then the said Sheriff shall incur the pain of an hundred pounds, to be paid to our Lord the King, and also that he have Imprisonment by a year, without being let to mainprise or bail (8) and that the Knights for the Parliament returned contrary to the said Ordinance, shall lose their wages.

Provided always, that he which cannot expend forty Shillings by year, as afore is said, shall in no wise be Chuser of the Knights for the Parliament; (2) and that in every Writ that shall hereafter go forth to the Sheriff

Sheriffs to chuse Knights for the Parliament, mention be made of the said Ordinances.

Note

*Though this Statute make the penalty on a Sheriff but 100*l.* for a false Return, yet the House may further punish him by Imprisonment &c. at their pleasure by the Law and Custom of Parliaments.*

We shall now proceed to certain excellent Laws of a latter Date, made for the explanation and conservation of our Liberties; and in the first place present you with that excellent Petition of Right, granted by King Charles the first.

Anno Regni Caroli Regis Tertio.

The PETITION exhibited to His Majesty by the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, concerning diverse Rights and Liberties of the Subjects.

To the Kings most excellent Majesty.

HUMbly shew unto our Sovereign Lord the King, the Lords Spiritual and Temporal and Commons in Parliament assembled, That whereas it is declared and enacted by a Statute made in the time of the Reign of King Edward the first, commonly called Statutum de Tallagio non Concedendo, that no Tallage or Aid shall be laid or Levyed by the King or his Heirs in this Realm, without the good Will and Assent of the Arch-bishops, Bishops, Earles, Barons, Knights, Burgeses, and other the Freemen of the Commonalty of this Realm; (2) and by authority of Parliament holden in the five and twentieth year of the Reiga of King Edward the third, it is declar-
ed

ed and Enacted, that from thenceforth no person should be Compelled to make any Loans to the King against his Will, because such Loans were against Reason, and the *Franchise of the Land*; (3) And by other Laws of the Realm it is provided, that none should be Charged by any Charges or Imposition called a Benevolence, nor by such like Charge, (4) By which the Statute before mentioned, and other the good Laws and Statutes of this Realm, your Subjects have *Inherited this Freedom*, that they should not be Compelled to Contribute to any Tax, Tallage, Aid, or other like Charge, not set by Common Consent in Parliament.

2. Yet nevertheless, of late divers *Commissions* directed to sundry Commissioners in several Counties, with Instructions, have Issued, by means whereof your people have been in divers places Assembled and required to lend certain Sums of Money unto your Majesty, and many of them, upon their refusal so to do, have had an Oath administred unto them not warrantable by the Laws or Statutes of this Realm, and have been Constrained to become bound to make Appearance and Attendance before your *Privy Council*, and in other places, and others of them have been therefore Imprisoned Confined and sundry other ways molested and disquieted (2) and divers other Charges have been laid and levyed upon your people in several Counties by Lord Lieutenants and Deputy Lieutenants, Commissioners for Musters, Justices of Peace, and others, by Command or direction from your Majesty to your *Privy Council*, against the Law and free Customs of this Realm.

3. And where also by the Statute called the *great Charter* of the Liberties of *England*, it is declared and Enacted, that no Freeman may be taken or imprisoned, or be disseised of his Freehold or Liberties, or of his free Customs, or be outlawed or Exiled, or in

in any manner destroyed, but by the lawfull Judgment of his Peers, or by the Law of the Land.

4. And in the eight and twentieth year of the Reign of King *Edward* the third, it was declared and Enacted by Authority of Parliament, that no man of what Estate or Condition that he be, should be put out of his *Land or Tenements*, nor taken nor *Imprisoned*, nor disinherited, nor put to death, without being brought to answer, by due process of Law.

5. Nevertheless, against the tenor of the said Statutes and other the good Laws and Statutes of your Realm to that end provided, diverse of your Subjects of late have been *Imprisoned* without any cause shewed; (2) and when for their deliverance they were brought before Justices by your Majesties Writs of *Habeas Corpus*, there to undergo and receive as the Court should order, and their keepers commanded to certify the causes of their detainour, no cause was certified, but that they were detained by your Majesties *special command*, signified by the Lords of your privy Council, and yet were returned back to several prisons without being charged with any thing, to which they might make answer according to the Law.

6. Whereas of late great *Companies of Souldiers* and Mariners have been dispersed into diverse Counties of the Realm, and the Inhabitants against their wills, have been compelled to receive them into *their Houses*, and there to suffer them to sojourn, against the Laws and Customes of this Realm, and to the great grievance and vexation of the People.

7. And whereas also by authority of Parliament, and in the five and twentieth year of the reign of King *Edward* the third, it is declared and enacted; that no man shall be forejudged of life and limb, against the form of the great Charter and Law of the Land; (2) and by the said great Charter and other the Laws and Statutes of this Your Realm, no man ought to

be Judged to death, but by the Laws established in this your Realm, either by the Customes of the Realm, or by Acts of Parliament; (3) And whereas no offender of what kind soever, is exempted from the proceedings to be used, and punishments to be inflicted by the Laws and Statutes of this your Realm; nevertheless, of late diverse Commissions under Your Majesties great Seal have Issued forth, by which certain persons have been Assigned and appointed Commissioners, with power and authority to proceed within the Land, according to the Justice of Martial Law, against such Souldiers and Mariners, or other dissolute persons joining with them, as should commit any Murder, Robbery, Felony, Mutiny, or other Outrage or Misdemeanour whatsoever, and by such summary Courte and Order as is agreeable to Martial Law, and as is used in Armies in time of war, to proceed to the Tryal and Condemnation of such Offender, and them to cause to be executed and put to death according to the Law Martial.

8. By Pretext whereof some of your Majesties Subjects have been by some of the said Commissioners put to death, when and where, if by the Laws and Statutes of the Land they had deserved death, by the same Laws and Statutes also they might, and by no other ought to have been Judged and Executed.

9. And also sundry greivous offenders, by colour thereof, claiming an exemption, have Escaped the punishments due to them by the Laws and Statute of this your Realm by reason that divers of your Officers and Ministers of Justice have unjustly refused or forborne to proceed against such Offenders according to the same Laws and Statutes, upon pretence that the said Offenders were punishable only by Martial Law, and by Authority of such Commission as aforesaid; (2) which Commissions, and all other of like nature, are wholly and directly Contrary to the said Laws and Statutes of this your Realm.

10. They do therefore humbly pray your most Excellent Majesty, that no man hereafter be compelled to make or yield any Gift, Loan, Benevolence, Tax, or such like Charge, without Common consent by act of Parliament; (2) and that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same, or for refusal thereof; (3) and that no Freeman in any such manner as is before mentioned be Imprisoned or detained; (4) And that your Majesty would be pleased to remove the said Souldiers and Mariners, and that your people may not be so barthened in time to come; (5) and that the foresaid Commissions for proceeding by Martial Law, may be revoked and annulled; and that hereafter no Commissions of like nature may Issue forth to any person or persons whatsoever to be executed as aforesaid; lest by colour of them, any of your Majesties Subjects be destroyed, or put to death contrary to the Laws and Franchise of the Land.

II. All which they most humbly pray of your most Excellent Majesty, *as their Rights and Liberties*, according to the Laws and Statutes of this Realm, and that your Majesty would also vouchsafe to declare, that the awards, doings and proceedings to the prejudice of your people in any of the premises, shall not be drawn hereafter into Consequence or Example; (2) and that your Majesty would be also graciously pleased for the further comfort and safety of your people, to declare your Royal Will and Pleasure, that in the things aforesaid, all your Officers and Ministers shall serve you according to the Laws and Statutes of this Realm, as they tender the honour of Your Majesty and the prosperity of this Kingdom.

Which Petition being Read, the second of June, 1682. the Kings Answer was thus delivered unto it.

The King willeth, that Right be done, according to the Laws and Customs of the Realm, and that the Statutes be put in due Execution, that His Subjects may have no Cause to complain of any wrong, or oppressions, contrary to their just Rights and Liberties: To the Preservation whereof, he holds himself in Conscience as well obliged, as of his Prerogative.

But this Answer not giving satisfaction, the King was again Petitioned unto, that he would give a full and satisfactory answer to their Petition in full Parliament.—Whereupon the King in Person, upon the seventh of June, made this Second Answer, *My Lords and Gentlemen!*

The Answer I have already given you, was made with so good Deliberation, and approved by the Judgment of so many Wise Men, that I could not have Imagined, but that it should have given you full satisfaction; but to avoid all ambiguous Interpretations, and to shew you that there is no doubleness in my meaning, I am willing to please you in words, as well as in substance; read your Petition, and you shall have an Answer that I am sure will please you.

And then causing the Petition to be read distinctly by the Clerk of the Crown, the Clerk of the Parliament read the Kings Answer thereto in these words, *Soit Droit Fait, Comme vous desire, which is, Let Right be done as is desired.*

This Answer, and the manner of Confirming this Law, I have the rather recited, because the Kings Answer and Circumstances relating thereunto, are wholly left out in our last Printed Book of Statutes.

The Petition it self is so plain that there needs no Comment thereon, only the Reader may observe that the things therein mentioned were the antient Rights of the people, and therefore they expressly demand them of the King *as their Rights and Liberties*.

In the next place we shall add, the late excellent Habeas Corpus Act, because relating to the same Subject, *viz.* The freeing of the Subject from causeless tedious and arbitrary Imprisonments.

Anno Tricesimo primo Caroli Secundi Regis.

CHAP. II.

An Act for the better securing the Liberty of the Subject, and for prevention of Imprisonments beyond Seas.

Comonly called the Habeas Corpus Act.

I. **VV** Hereas great delays have been used by Sheriffs, Goalers, and other Officers to whose Custody any of the Kings Subjects have been committed for Criminal, or supposed Criminal matters, in making Returns of Writs of *Habeas Corpus* to them directed, by standing out an *Alias*, and *Pluries*, *Habeas Corpus*, and sometimes more, and by other shifts, to avoid their yielding obedience to such Writs, contrary to their duty, and the known Laws of the Land, whereby many of the Kings Subjects have been, and hereafter may be long detained in Prison, in such Cases where by Law they are Ballable, to their great Charges and Vexation.

II. For the prevention whereof, and the more speedy relief of all persons Imprisoned for any such Criminal, or supposed Criminal matters. (2) Be it Enacted by the Kings most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual, and Temporal, and Commons in this present Parliament Assembled, and by the Authority thereof, That whensoever any person or persons shall bring any *Habeas Corpus* directed unto any Sheriff or Sheriffs, Goaler, Minister or other person whatsoever, for any person in his or their Custody, and the said Writ shall be served upon the said Officer, or left at the Goal or Prison with any of the under Officers, under Keepers, or Deputy of the said Officers or Keepers, that the said Officer or Officers his or their under Officers or Keepers or Deputies, shall

shall within three days after the service thereof, as
 aforesaid (unless the Commitment aforesaid were for
Treason or Felony, plainly and specially expressed in
 the Warrant of Commitment) upon payment or
 tender of the Charges of bringing the said Prisoner
 to be Ascertained by the Judge or Court that awarded
 the same, and Endorsed upon the said Writ,
 not exceeding twelve pence per Mile, and upon security
 given by his own Bond to pay the Charges of
 carrying back the Prisoner, if he shall be Remanded
 by the Court or Judge, to which he shall be brought,
 according to the true intent of this present Act, and
 that he will not make any Escape by the way, make
 Return of such Writ. (3) And bring or cause to
 be brought the Body, of the party so Committed or
 Restrained, unto, or before, the Lord Chancellor,
 or Lord Keeper of the Great Seal of *England* for
 the time being, or the Judges or Barons of the said
 Court from whence the said Writ shall Issue, or
 unto and before such other person or persons before
 whom the said Writ is made returnable, according
 to the Command thereof: (4) And shall then like-
 wise certify the true Causes of his Detainer, or Im-
 prisonment, unless the Commitment of the said
 party be in any place beyond the distance of twenty
 Miles from the place or places, where such Court or
 Person is or shall be Residing: and if beyond the
 distance of twenty Miles, and not above one hun-
 dred Miles, than within the space of twenty days
 after such the delivery aforesaid, and not longer.

III. And to the Intent that no Sheriff, Goaler,
 or other Officer may pretend ignorance of the im-
 port. of any such Writ. (2) Be it Enacted by the
 Authority aforesaid, That all such Writs shall be
 marked in this manner, *Per statutum Tricesimo pri-
 mo Caroli Secundi Regis*, and shall be signed by the
 person that Awards the same. (3) And if any
 person or persons shall be, or stand Committed or

Detained

Detained as aforesaid, for any Crime, unless, for Felony or Treason, plainly expressed in the Warrant of Commitment, in the Vacation time, and out of Term, it shall and may be lawful to and for the person or persons so Committed or Detained (other than persons Convict, or in Execution) by Legal Process; or any one on his or their behalf to Appeal, or complain to the Lord Chancellor, or Lord Keeper, or any one of His Majesties Justices either of the one Bench, or of the other, or the Barons of the Exchequer of the degree of the Coif. (3) And the said Lord Chancellor, Lord Keeper, Justices, or Barons, or any of them, upon view of the Copy or Copies of the Warrant or Warrants of Commitment and Detainer, or otherwise upon Oath made, that such Copy or Copies were denied to be given by such person or persons, or any on his, her, or their behalf, attested and subscribed by two Witnesses, who were present at the delivery of the same, to award and grant an *Habeas Corpus* under the Seal of such Court whereof he shall then be one of the Judges. (5) To be directed to the Officer or Officers in whose Custody the party so Committed or Detained, shall be returnable immediately before the said Lord Chancellor or Lord Keeper, or such Justice, Baron, or any other Justice or Baron of the Degree of the Coif of any of the said Courts, (6) And upon service thereof as aforesaid, the Officer or Officers, his or their under Officer or under Officers, under Keeper or under Keepers, or Deputy to whose Custody the party is so Committed or Detained, shall within the times respectively before limited, bring such Prisoner or Prisoners before the said Lord Chancellor or Lord Keeper, or such Justices, Barons, or one of them, before whom the said Writ is made Returnable, and in case of his absence, before any other of them, with the Return of such Writ, and the true Causes of the Commitment, and Detainer. (7) And there-

thereupon within two days after the party shall be brought before them, the said Lord Chancellor or Lord Keeper, or such Justice or Baron before whom the Prisoner shall be brought as aforesaid, shall discharge the said Prisoner from his Imprisonment, taking his or their Recognizance, with one or more surety or sureties in any sum, according to their discretion, having regard to the Quality of the Prisoner, and Nature of the Offence, for his or their appearance in the Court of Kings Bench the Term following, or at the next Assizes, Sessions, or General Goal-delivery of and for such County, City, or Place, where the Commitment was, or where the Offence was Committed, or in such other Court where the said Offence is properly Recognizable, as the Case shall require, and then shall Certifie the said Writ, with the Return thereof, and the said Recognizance or Recognizances, into the said Court, where such appearance is to be made. (6) Unless it shall appear, unto the said Lord Chancellor, or Lord Keeper, or Justice or Justices, Baron or Barons, that the party so Committed is Detained upon a Legal Process, Order, or Warrant out of some Court that hath Jurisdiction of Criminal matters, or by some Warrant Signed and Sealed with the Hand and Seal of any, of the said Justices or Barons, or some Justice or Justices of the Peace, for such matters or offences for the which by the Law the Prisoner is not Bailable.

IV. Provided always, and be it Enacted, That if any person shall have wilfully neglected by the space of two whole Terms after his Imprisonment, to pray a *Habeas Corpus* for his Enlargement, such person so wilfully neglecting, shall not have any *Habeas Corpus* to be granted in Vacation time in pursuance of this Act.

V. Be it further Enacted by the Authority aforesaid, That if any Officer or Officers, his or their under

Under-Officer, Under-Officers, Under-Keeper, or Under-Keepers, or Deputy, shall neglect or Refuse to make the Returns aforesaid, or to Bring the Body or Bodies of the Prisoner or Prisoners according to the Command of the said Writ, within the Respective times aforesaid, or upon demand made by the Prisoner, or Person in his Behalf; shall Refuse to deliver or within the space of six hours after demand, shall not deliver to the Person so demanding, a true Copy of the Warrant or Warrants of Commitment and detainer of such Prisoner, which he or they are hereby Required to deliver accordingly, all and every the Head Gaolers, and Keepers of such Prisons, and such other Person, in whose Custody the Prisoner shall be detained, shall for the first Offence forfeit to the Prisoner or Party Grieved, the sum of one hundred pounds; (2.) And for the second Offence, the sum of two hundred pounds, and shall and is hereby made Incapable to Hold or Execute his said Office; (3.) the said penalties to be Recovered by the Prisoner or Party grieved, his Executors or Administrators, against such Offenders, his Executors or Administrators, by any Action of Debt, Suit, Bill, plaint or Information, in any of the King's Courts at *Westmin.* wherein no Essoign, Protection, privileged Injunction, Wager of Law, or stay of Prosecution by *Non vult ulterius prosequi*, or otherwise, shall be Admitted or Allowed, or any more than one Impar lance (4.) And any Recovery or Judgment at the Suit of any Party Grieved, shall be a sufficient Conviction for the first Offence; and any after Recovery or Judgment at the suit of a Party Grieved for any Offence after the first Judgment, shall be a sufficient Conviction to Bring the Officers or Person within the said penalty for the second Offence.

6. And for the prevention of unjust Vexation by Reiterated Commitments for the same; (2.) Be it Enacted by the Authority aforesaid, That no Person

or Persons which shall be delivered or set at Large upon any *Habeas Corpus*, shall at any time hereafter be again Imprisoned or Committed for the same Offence, by any Person or Persons whatsoever, other than by the Legal order, and process of such Court wherein he or they shall be Bound by Recognizance to appear, or other Court having Jurisdiction of the Cause; (3.) And if any other Person or Persons shall knowingly contrary to this Act Recommit, or Imprison, or knowingly procure or Cause to be Recommitted or Imprisoned for the same Offence, or pretended Offence, any Person or Persons delivered or set at Large as aforesaid, or be knowingly aiding or Assisting therein, then he or they shall forfeit to the Prisoner or Party Greived, the sum of five hundred pounds, any colourable pretence or variation in the Warrant or Warrants of Commitment notwithstanding, to be Recovered as aforesaid.

7. Provided alwayes, and be it further Enacted, That if any Person or Persons shall be Committed for High Treason or Felony, Plainly and specially Expressed in the Warrant of Commitment, upon his prayer or petition in open Court the first week of the Term, or first day of the Sessions of Oyer and Terminer, or General Gaol delivery, to be Brought to his Tryal, shall not be indicted sometime in the next Term, Sessions of *Oyer and Terminer*, or General Gaol delivery after such Commitment, If shall and may be Lawful to and for the Judges of the Court of Kings Bench, and Justices of *Oyer and Terminer*, or General Gaol delivery, and they are hereby Required upon motion to them made in open Court the last day of the Term, Sessions, or Gaol delivery, either by the Prisoner, or any one in his Behalf, to set at Liberty the Prisoner upon Bail, unless it appear to the Judges and Justices upon Oath made, that the Witnesses for the King could not be produced the same Term, Sessions or General Gaol delivery; (2.) And

If any person or persons Committed as aforesaid, upon his prayer or petition in open Court, the first week of the Term, or first day of the Sessions of Oyer and Terminer, and General Gaol delivery, to be Brought to his Tryal, shall not be Indicted and Tried the second Term, Sessions of Oyer and Terminer, or General Gaol delivery after his Commitment, or upon his Tryal shall be Acquitted, he shall be discharged from, his Imprisonment.

8. Provided alwaies, That nothing in this Act shall extend to discharge out of prison any person charged in debt, or other Action, or with process in any Civil Cause, but that after he shall be discharged of his Imprisonment for such his Criminal Offence, he shall be kept in Custody according to Law, for such other suit.

9. Provided alwaies, and be it Enacted by the Authority aforesaid, That if any person or persons subjects of this Realm, shall be Committed to any prison, or in Custody of any Officer or Officers whatsoever, for any Criminal, or Supposed Criminal matter, That the said person shall not be Removed from the said prison and custody, into the custody of any other Officer or Officers, (2.) unless it be by Habeas Corpus, or some other Legal writ; or where the prisoner is delivered to the Constable or other Inferiour Officer to carry such prisoner to some Common Gaol; (3.) or where any person is sent by order of any Judge of Assize, or Justice of the peace to any Common workhouse, or house of Correction; (4.) or where the prisoner is Removed from one prison or place to another within the same County, in order to his or her Tryal or discharge in due Course of Law; (5.) or in case of sudden fire or Infection, or other Necessity; (6.) And if any person or persons shall after such Commitment aforesaid, make out and sign, or Counter sign any Warrant or Warrants for such Removal aforesaid, contrary to this Act, as well as that makes or signs or Counter signs such Warrant

or Warrants as the Officer or Officers, that obey or Execute the same, shall suffer, and Incur the pains, and Forfeitures in this Act before-mentioned, both for the first and second Offence Respectively, to be Recovered in manner aforesaid by the party Griev-
ed.

10. Provided also, and be it further Enacted by the Authority aforesaid, That it shall and may be Lawful to and for any prisoner and prisoners as aforesaid, to move, and obtain his or their *Habeas Corpus*, as well out of the High Court of *Chancery*, or Court of *Exchequer*, as out of the Courts of *Kings Bench*, or *common pleas*, or either of them; (2.) And if the said Lord Chancellour, or Lord Keeper, or any Judge or Judges, Baron or Barons for the time being, of the degree of the *Cof* of any of the Courts aforesaid in the Vacation time, upon view of the Copy or Copies of the Warant or Warants of Commitment or Detainer, or upon Oath made, that such Copy or Copies were denied as aforesaid, shall deny any writ of *Habeas Corpus* by this Act Required to be Granted, being moved for as aforesaid, they shall severally Forfeit to the prisoner or party Grievd, the sum of five hundred pounds, to be Recovered in manner aforesaid.

11. And Be it Enacted, and declared by the Authority aforesaid, That an *Habeas Corpus* according to the true Intent and meaning of this Act, may be directed, and Run into any County *Palatine*, the Cinque ports or other privileged places within the Kingdom of *Engl.* Dominion of *Wales*, or Town of *Berwick* upon *Tweed*, and the Isles of *Fersey*, or *Guernsey*; any Law or Usage to the Contrary notwithstanding.

12. And for preventing *Illegal* Imprisonments in prisons beyond seas (2.) Be it further Enacted by the Authority aforesaid, That no subject of this Realm that now is, or hereafter shall be an Inhabitant or Resident of this Kingdom of *England*, Dominion of *Wales*

or Town of *Berwick upon Tweed*, shall or may be sent prisoner into *Scotland, Ireland, Fersey, Guernsey, Tangier*, or into any parts, Garrisons, Islands, or places beyond the seas, which are, or at any time hereafter, shall be within or without the Dominions of His Majesty, His heirs or successours, (3.) And that every such Imprisonment is hereby Enacted and adjudged to be *Illegal*; (4.) and that, If any of the said subjects now is, or hereafter shall be so Imprisoned, every such person and persons so Imprisoned, shall and may for every such Imprisonment, maintain by vertue of this Act, an Action or Actions of false Imprisonment, in any of his Majesties Courts of Record, against the person or persons by whom he or she shall be so Committed, detained, Imprisoned, sent prisoner, or Transported Contrary to the true meaning of this Act, and against all or any person or persons that shall frame, Contrive, Write, Seal, or Counter sign any Warrant or Writing for such Commitment, detainer, Imprisonment, or Transportation, or shall be Advising, Aiding, or Assisting in the same; or any of them; (5.) And the plaintiff in every such Action shall have Judgment to Recover his Treble Costs, besides damages; * which damages so to be Given, shall not be less than five hundred pounds; (6.) in which Action, no delay, stay or stop of proceeding, by Rule, order, or Command, nor no Injunction, protection, or privilege whatsoever, nor any more than one Imparance shall be allowed. Excepting such Rule of the Court wherein the Action shall depend, made in open Court, as shall be thought in Justice necessary, for special cause to be Expressed in the said Rule; (7.) And the person or persons who shall Knowingly Frame, Contrive, write, seal or Counter sign any Warrant for such Commitment, detainer, or Transportation, or shall so Commit, detain, Imprison, or Transport any person or persons Contrary to this Act, or be any waies Advising, aiding or Assisting therein being Lawfully Con-

viſted thereof, ſhall be diſabled from thenceforth to Bear any Office of Truſt or Profit within the ſaid Realm of *England*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, or any of the Iſlands, Territories or Dominions thereunto Belonging. (8.) And ſhall Incur and ſuſtain the pains, Penalties and Forfeitures Limited, ordained, and provided in and by the ſtate of Proviſion and Premunire, made in the ſixteenth year of King *Richard* the Second. (9.) And be incapale of any pardon from the King, His Heirs or Succeſſours, of the ſaid Forfeitures, Loſſes, or diſabilities, or any of them.

13. Provided alwaies, That nothing in this Act extend to give Benefit to any perſon who ſhall by Contract in Writing agree with any Merchant, or Owner, of any plantation, or other perſon whatſoever, to be transported to any parts beyond the Seas, and receive Earneſt upon ſuch Agreement, although that afterwards ſuch perſon ſhall Renounce ſuch Contract.

14. Provided alwaies, and be it Enacted, That If any perſon or perſons Lawfully Convicted of any Felony, ſhall in open Court pray to be Transported beyond the ſeas, and the Court ſhall think fit to leave him or them in priſon, for that purpoſe ſuch perſon or perſons may be Transported into any parts beyond the ſeas; This Act or any thing therein Contained to the contrary notwithstanding.

15. Provided alſo, and be it Enacted, That nothing herein Contained, ſhall be deemed, Conſtrued, or taken to Extend to the Imprisonment of any perſon before to firſt day of *June*, one thouſand fix hundred ſeventy and nine, or to any thing Adviſed, procured, or otherwiſe done, Relating to ſuch Imprisonment; Any thing herein Contained to the Contrary notwithstanding.

16. Provided alſo, That If any perſon or perſons at any time Reſiant in this Realm, ſhall have committed any

any Capital Offence in *Scotl.* or *Ireland*, or any of the Islands, or Foreign Plantations of the King His Heirs or Successors, where he or she, ought to be Tryed for such Offence, such person or persons may be sent to such place there to Receive such Tryal, in such manner as the same might have been used before the making of this Act; any thing herein contained to the contrary notwithstanding.

17. Provided alwayes, and be it Enacted, That no person or persons shall be sued, Impleaded, Molested or Troubled for any Offence against this Act, unless the party offending be Sued or Impleaded for the same within two years at the most after such time wherein the Offence shall be Committed in Case the party Grieved shall not be then in Prison, and if he shall be in Prison, then within the space of two years after the decease of the Person Imprisoned, or his, or her delivery out of Prison, which shall first happen.

18. And to the intent no person may Avoyd his Tryal at the Affizes, or General Gaol delivery, by procuring his Removal before the Affizes at such time as he cannot be brought back to receive his Tryal there; (2.) Be it Enacted, That after the Affizes proclaimed for that County where the Prisoner is detained, no person shall be Removed from the common Gaol upon any Habeas Corpus granted in pursuance of this Act, but upon any such *Habeas Corpus*, shall be brought before the Judge of Affize in open Court, who is thereupon to do what to Justice shall appertain.

19. Provided nevertheless, That after the Affizes are Ended, any person or persons detained may have his or her *Habeas Corpus* according to the direction and Intention of this Act.

20. And be it also Enacted by the Authority aforesaid, That if any Information, Suit, or Action shall be Brought or Exhibited against any person or persons for any Offence committed, or to be committed against the form of this Law, it shall be Lawful for such defen-

dants to plead the General Issue, that they are not Guilty, or that they own nothing, and to give such special matter in Evidence to the Jury that shall Try the same, which matter being pleaded, had been good & sufficient in Law to have discharged the said Defendant or Defendants against the said Information, Suit or Action, & the said matter shall be then as available to him or them, to all Intents and purposes, as if he or they had sufficiently pleaded, set forth or Alledged the same matter in Bar or Discharge of such information, Suit or Action.

21. And because many times persons charged with *petty Treason* or *Felony*, or as *Accessaries* thereunto are Committed upon suspicion only, whereupon they are *Bailable*, or not, according as the Circumstances making out that suspicion are more or less weighty, which are best known to the Justices of Peace that committed the persons, and have the Examinations before them, or to other Justices of the Peace in the County: (2.) Be it therefore Enacted, That where any person shall appear to be Committed by any Judge, or Justice of the Peace, and charged as *Accessory* before the Fact, to any *petty Treason* or *Felony*, or upon suspicion thereof, or with suspicion of *petty Treason* or *Felony*, which *petty Treason* or *Felony* shall be plainly & specially expressed in the Warrant of Commitment, that such person shall not be Removed or Bailed by vertue of this Act, or in any other manner than they might have been before the making of this Act.

The Comment.

There are three things, which the Law of *England* (which is a Law of Mercy) principally Regards and taketh care of, *viz. Life, Liberty and Estate*. Next to a man's Life, the nearest thing that concerns him, is *freedom of his person*, For indeed what is Imprisonment, but a kind of *Civil Death*? Therefore saith *Fortescue Cap. 42. Angliæ Fura in omni Casu Liberati dant favorem*. The Laws of *England* do in *All Cases* favour Liberty.

Touching

Touching *Commitments*, and what is Required to make a *Legal Mittimus*, see before Pag. 27.

The Writ of *Habeas Corpus* is a Remedy given by the common Law for such as were unjustly detained in custody, to procure their Liberty: But before this statute, was Rendred far less useful than it ought to be partly by the Judges, pretending a power to Grant, or deny the said Writ at their pleasure, in many cases, and Especially by the ill practises of Sheriffs and Gaolers, by putting the prisoner to the charge and trouble of an *Alias* and *pluries* (that is a second and third Writ, before they would obey the first, for there was no penalty till the Third) and then at last the Judges would oft-times Alleadge, That they could not take Bail, because the party was a *prisoner of State*, &c. Therefore to Remedy all those mischiefs, This most wholesome Law was provided. Which we shall briefly Endeavour to Divide into its several Branches, and Explain it to the meanest Capacities, since no Man is sure but one time or other, he may have occasion to make use of it.

This Act concerneth either first, persons committed for some other Criminal, or supposed Criminal matter, (besides *Treason* or *Felony*.) and these are to have an *Habeas Corpus* Immediately; 2ly. such who in their *Mittimus* are charged with *Treason* or *Felony*, & these shall have the benefit of the said Writ after the time herein Limited. 1st. If any Gaoler or Under-Keeper shall not deliver a true Copy of the *Mittimus* within 6 hours after the prisoner demands it, the Head-Gaoler or Keeper forfeits to the prisoner for the first Offence 100l. for the second Offence 200l. and loses his place. Nor is there any Fee to be paid for the same, the Turn-key must deliver it at his peril. And note if the prisoner should be lockt up, or none suffered to come at him, any friend of his may demand the same on his behalf.

2. Whatever the Criminal matter be, If *Treason* or *Felony* be not Expressly charged, any person

on the prisoners behalf, carrying such true Copy of the Commitment to the Lord Chancellor, or any one of the Judges, or Barons of the Exchequer, or upon Oath made that a Copy was demanded and denied, he shall Grant an Habeas Corpus, or forfeit 500*l.* to the prisoner; But note, the Request must be made to such Judge in Writing, and Attested by two witnesses.

3. If the Sheriff or Gaoler do not carry up the prisoner and Return the true causes of his detainer, within three days, If under twenty miles distance, or within ten daies if above twenty, and under an hundred miles, or within twenty daies if above an hundred miles, he forfeits 500*l.* to the prisoner.

Note the prisoner must pay the Charges of his carrying up, and the Judge when he Grants the Writ, may order how much, but it must not be above 12*d.* a mile.

If upon the Return of such Habeas Corpus, it appear the prisoner is not charged with Treason or Felony, specially and plainly Expressed, or for such matters, as by Law are not Bailable, the Judge shall discharge the prisoner upon Bail.

4. If a person once so Bailed out, shall again be Imprisoned for the same Offence, those that do it forfeit 500*l.*

5. If there be High Treason or Felony plainly and specially Expressed [That is, not only Generally, for Treason or Felony, but Treason in conspiring to kill the King, or in Counterfeiting the King's Coin, or Felony, for stealing the goods of such an one to such a value, &c.] Then the Prisoner cannot have his Habeas Corpus; till first he has on the first week of the Term, or first day of Sessions of Oyer and Terminer, or General Gaol-delivery petitioned in open Court to be brought to his Tryal; and then if he be not brought to Tryal the next Term, or Sessions following, on the last day thereof, he shall be Bailed; and if not Indicted the second Term or Sessions, shall be discharged.

6. This

6. This Act extends to all places within England and Wales; the Tower cannot be supposed to be exempted, nor Windsor Castle, nor any such Royal Forts; for the words are general: And besides, there is a special Act of Parliament, that unites the King's Castles to the Counties wherein they stand; there having been it seems some pretensions and ill practices to hold them distinct, that therein they might detain men prisoners against Law, and not admit any Writ to enlarge them. For Remedy whereof it was thus Enacted;

Anno 13. Rich. Secundi.

Item. It is Ordained and Assented, That the King's Castles and Gaols which were wont to be Joynd to the Bodies of the Counties, and be now Severed, shall be Re-joynd to the same Counties.

Lastly, No person shall be sent Prisoner out of England or Wales, into Scotland, Ireland, Ferssey, Guernsey, Tangier, or any other place beyond the Seas.

The Proviso's and other Clauses of this Act may be easily apprehended by the meanest capacities.

AND, As the Law provides thus for our Liberty, so it takes care, that those that are in Custody, shall not be abused or oppressed; to which purpose I shall here insert so much as is material & necessary to be known by all persons, who are so unhappy as to be prisoners, out of the Statute of the 22d. and 23d. Car. 2. Cap. 20.

The words wereof are as follows:

'WHEREAS Persons that are under Arrests, or committed to the custody of Sheriffs, Bailiffs, Gaolers, Keepers of Prisons, or Gaols, are much abused and wronged by Extorting of great Fees, Rewards, and other Exactions, and put to great Expences under pretences of favour, or otherwise, whereby they are greatly Oppressed, and manytimes Ruined in their Estates. (2.) For Remedy thereof, Be it Enacted by the Authority aforesaid, That if any Under-Sheriff, Bailiff, Serjeant at Mace, or other Officer or Minister

Minister whatsoever, shall at any time or times hereafter have in his or their Custody, any person or persons by vertue or colour of any Writ, Process, or other Warrant whatsoever, it shall not be lawful for such Officer or Officers, to convey or carry, or cause to be conveyed or carried the said person or persons to any Tavern, Ale-House, or other publick Victualling or Drinking-House, without the free and voluntary consent of the said person or persons, so as to charge such Prisoner with any sum of Money for any Wine, Beer, Ale, Victuals, Tobacco, or any other things whatsoever, but what the said person or persons shall call for, of his, her, or their own accord, (3.) And shall not demand, take or receive, or cause to be demanded, taken or received, directly or indirectly, any other, or greater Sum or Sums than what by Law ought to be taken or demanded for such Arrest, taking, or waiting (until such person or persons shall have procured an Appearance, found Bail, agreed with his or their Adversaries, or be sent to the proper Gaol belonging to the County, City, Town or Place where such Arrest or taking shall be,) (4.) Nor take and Exact any other Reward or Gratuity for so keeping the said person or persons out of the Gaol or Prison, than what he, she or they shall or will of his, her, or their own accord, voluntarily and freely give. (5.) Nor take, nor receive any other, or greater Sum or Sums for each nights Lodging, or other Expences, than what is reasonable and fitting in such cases, or shall be so adjudged by the next Justice of the Peace, or at the next Quarter-Sessions. (6.) And shall not cause or procure the said person or persons, to pay for any other Wine, Beer, Ale, Victuals, Tobacco, or other things, than what the said person or persons shall voluntarily, freely, and particularly call for.

And that every Under-Sheriff, Gaoler, Keeper
of

'of Prison or Gaol, and every person or persons
 'whatsoever, to whose Custody any person or per-
 'sons shall be delivered or committed, by virtue of
 'any Writ of Process, or any pretence whatsoever,
 'shall permit and suffer the said person or persons, at
 'his and their will and pleasure, to send for, and
 'have any Beer, Ale, Victuals, and other necessa-
 'ry Food, where, and from whence they please;
 'and also to have and use such Bedding, Linnen, and
 'other things, as the said person or persons shall
 'think fit, without any purloyning, detaining or
 'paying for the same, or any part thereof; nor shall
 'demand, take or receive of the said person or per-
 'sons, any other, or greater Fee or Fees whatso-
 'ever, for his, her, or their Commitment, Release or
 'Discharge; or for his, her, or their Chamber-Rent,
 'than what is allowable by Law, untill the same shall
 'be settled by three Justices of the Peace, whereof one
 'to be of the *Quorum*, of each particular County, Ci-
 'ty and Town Corporate, in their severall Precincts;
 'and for the City of *London*, and Counties of *Middle-*
 '*sex* and *Surrey*, the two Lord Chief Justices of the
 '*Kings's-Bench* and *Common-Pleas*, and the Lord Chief
 'Baron, or any two of them, and the Justices of the
 'Peace of the same, in their severall Jurisdictions.

'And likewise that the said Lord Chief Justice,
 'Lord Chief Baron, and Justices of the Peace in their
 'severall Jurisdictions, and all Commissioners for
 'Charitable Uses, do their best Endeavours, and Di-
 'ligence to Examine, and finde out the severall Lega-
 'cies, Gifts and Bequests bestowed and given for the
 'Benefit and Advantage of the Poor Prisoners for
 'Debt, in the severall Gaols and Prisons in this King-
 'dom, and to send for any Deeds, Wills, Writings,
 'and Books of Accompts whatsoever; and any per-
 'son or persons concerned therein, and to Examine
 'them upon Oath, to make true discovery thereof
 '(which they have full Power and Authority hereby
 'to

‘to do) and the same so found out and ascertained,
 ‘to order and settle in some manner and way, that
 ‘the Prisoners hereafter may not be defrauded, but
 ‘Receive the full benefit thereof, according to the
 ‘true intent of the Donors.

‘And that these Accounts of the several Legacies,
 ‘Gifts and Bequests, given and bestowed upon the
 ‘several Prisoners for Debt, within this Kingdom,
 ‘and the several Rates of Fees, and the future Go-
 ‘vernment of Prisons, be signed and confirmed by
 ‘the Lord Chief Justices, and Lord Chief Baron, or
 ‘any two of them for the time being, and the Justices
 ‘of the Peace in *London, Middlesex and Surrey*; and
 ‘by the Judges for the several Circuits, and Justices of
 ‘the Peace for the time being, in their several Pre-
 ‘cincts, and fairly written and hung up in a Table in
 ‘every Gaol and Prison, before the first day of *No-*
 ‘*vember, 1671* and likewise be Registered by each,
 ‘and every Clerk of the Peace within his or their
 ‘particular Jurisdiction: And after such Establishment,
 ‘no other or greater Fee or Fees than shall be so
 ‘Established, shall be Demanded or Received.

‘And whereas it is become the common practice
 ‘of Gaolers, and Keepers of *Newgate, the Gate-house*
 ‘at *Westminster*, and sundry other Gaols and Prisons,
 ‘to Lodge together in one Room, or Chamber and
 ‘Bed, Prisoners for Debt, and Felons, whereby ma-
 ‘ny times honest Gentlemen, Trades-men and
 ‘others, Prisoners for Debt, are disturbed and hin-
 ‘dered in the night-time from their natural Rest, by
 ‘reason of their Fetters and Irons, and otherwise
 ‘much offended and troubled by their lewd and pro-
 ‘phane Language and Discourses, with most horrid
 ‘Curfing and Swearing (much accustomed to such
 ‘persons;) (2.) Be it Enacted by the Authority
 ‘aforesaid, That it shall not be lawful hereafter for
 ‘any Sheriff, Gaoler, or Keeper of any Gaol or Pri-
 ‘son, to put, keep or Lodge Prisoners for Debt, and
 ‘Felons

‘Felons together in one Room or Chamber; but that
‘they shall be put, kept, and Lodged separate and
‘apart one from another, in distinct Rooms, (3.) Upon
‘pain that he, she, or they which shall offend against
‘this Act, or the true Intent and meaning thereof, or
‘any part thereof, shall forfeit and lose his or her
‘Office, Place or Employment, and shall forfeit treble
‘damages to the party grieved, to be Recovered by
‘vertue of this Act, any Law, Statute, Usage or Cu-
‘stom to the contrary in any wise notwithstanding. .

And to the End that English-men may more en-
tirely enjoy their due Freedoms, the prudence of
our Legislators have thought fit from time to time to
Remove Encroachments thereupon, though under
pretence of Jurisdictions and Courts of Justice; and
to prohibit any Exorbitant Arbitrary Power for the
future, but that all things may be left to the calm
and equal proceedings of Law; and that most excel-
lent Method of Trial by *Juries*, one of the principal
Bulwarks of *England's Liberties*. For an Instance
hereof, take the Act following.

*An Act for Regulating of the Privy Council, and for
taking away the Court commonly called the
Star-Chamber.*

‘**V** Hereas, by the Great Charter, many
‘times confirmed in Parliament, it is
‘Enacted, That no Freeman shall be taken or Im-
‘prisoned, or Disseized of his Freehold or Liberties,
‘or Free Customs, or be Outlawed or Exiled, or other-
‘wise destroyed; and that the King will not pass
‘upon him, or condemn him, but by lawful Judg-
‘ment of his Peers, or by the Law of the Land;
‘(2.) And by another Statute made in the fifth
‘year of the Reign of King *Edward*, it is Enacted,
‘That no man shall be Attached by any Accusation,
‘nor fore-judged of Life or Limb, nor his Lands,
‘Tenements, Goods nor Chattels seized into the
‘King's

King's Hands against the Form of the Great Charter, and the Law of the Land: (3.) And by another Statute made in the five and twentieth year of the Reign of the same King *Edward* the third, it is Accorded, Affented, and Established, That none shall be taken by Petition, or Suggestion made to the King, or to his Council, unless it be by Indictment or Presentment of good and lawful people of the same Neighbourhood, where such Deeds be done, in due manner, or by Process made by Writ Original at the Common Law; and that none be put out of his Franchise or Freehold, unless he be duly brought in to Answer, and fore-judged of the same by the course of the Law: And if any thing be done against the same, it shall be Redress'd, and holden for none: (4.) And by another Statute made in the eight and twentieth year of the Reign of the same King *Edward* the Third, it is amongst other things Enacted, That no Man of what Estate or Condition soever he be, shall be put out of his Lands or Tenements, nor taken, nor Imprisoned, nor Disinherited, without being brought in to Answer by due Process of Law: (5.) And by another Statute made in the two and fortieth year of the Reign of the said King *Edward* the Third, it is Enacted, That no Man be put to Answer without Presentment before Justices, or matter of Record, or by due Process and Writ Original, according to the Old Law of the Land; and if any thing be done to the contrary, it shall be void in Law, and holden for Errour: (6.) And by another Statute in the six and thirtieth year of the Reign of the same King *Edward* the Third, it is amongst other things Enacted, That all Pleas which shall be pleaded in any Courts before any of the King's Justices, or in his other places; or before any of his other Ministers, or in the Courts and places of any other Lords within the Realm, shall be

‘be Entred and Enrolled in Latine: (7.) And
 ‘whereas by the Statute made in the third year of
 ‘King *Henry* the Seventh, Power is given to the Chan-
 ‘cellor, the Lord Treasurer of *England*, for the time
 ‘being, and the Keeper of the Kings Privy Seal, or
 ‘two of them, calling unto them a Bishop, and a
 ‘Temporal Lord of the King’s Most Honourable
 ‘Council, and the Two Chief Justices of the King’s
 ‘Bench and Common Pleas for the time being, or
 ‘other two Justices in their Absence, to proceed as
 ‘in that Act is expressed, for the punishment of some
 ‘particular Offences therein mentioned: (8.) And
 ‘by the Statute made in the one and twentyeth year
 ‘of King *Henry* the Eighth, the President of the Coun-
 ‘cil is Associated to joyn with the Lord Chancellour,
 ‘and other Judges in the said Statute of the Third of
 ‘*Henry* the Seventh mentioned: (9.) But the said
 ‘Judges have not kept themselves to the points li-
 ‘mited by the said Statute, but have undertaken to
 ‘punish where no Law doth warrant, and to make
 ‘Decrees for things having no such Authority, and to
 ‘Inflit heavier punishments than by any Law is
 ‘warranted.

2. ‘And forasmuch as all matters Examinate or
 ‘Determinable before the said Judges, or in the Court
 ‘commonly called the *Star-Chamber*, many have their
 ‘proper Remedy and Address, & their due punishment
 ‘and correction by the Common Law of the Land,
 ‘and in the ordinary course of Justice elsewhere:
 ‘(2.) And forasmuch as the Reasons and Motives
 ‘inducing the Erection and Continuance of that
 ‘Court do now cease; (3.) And the Proceedings,
 ‘Censures and Decrees of that Court, have by Ex-
 ‘perience been found to be an Intollerable Burthen
 ‘to the Subject, and the means to Introduce an Ar-
 ‘bitrary Power and Government: (4.) And forasmuch
 ‘as the Council-Table hath of late times assumed
 ‘unto it self a Power to Intermeddle in Civil, and
 ‘matters

‘ matters only of private Interest between Party and
 ‘ Party, & have adventured to determin of the Estates
 ‘ and Liberties of the Subjects, contrary to the Law of
 ‘ the Land, and the Rights and Priviledges of the Sub-
 ‘ ject, by which great and manifold mischiefs and in-
 ‘ conveniences have arisen and happened, and much
 ‘ Incertainty by means of such proceedings hath been
 ‘ conceived concerning mens Rights and Estates; for
 ‘ settling whereof, and preventing the like in time
 ‘ to come;

‘ 3. Be it Ordained and Enacted by the Authority of
 ‘ this present Parliament, That the said Court com-
 ‘ monly called the Star-Chamber, and all Jurisdic-
 ‘ tion, Power and Authority belonging unto, or Exer-
 ‘ cised in the same Court, or by any the Judges, Of-
 ‘ ficers or Ministers thereof, be from the first day of
 ‘ *August*, in the Year of our Lord God, one thousand
 ‘ six hundred forty and one clearly and absolutely dis-
 ‘ solved, taken away and determined; (2.) And that
 ‘ from the said first day of *August*, neither the Lord
 ‘ Chancellour or Keeper of the Great Seal of *England*,
 ‘ the Lord Treasurer of *England*, the Keeper of the
 ‘ Kings privy Seal, or President of the Council, nor
 ‘ any Bishop, Temporal Lord, privy Councillour, or
 ‘ Judge, or Justice whatsoever, shall have any power
 ‘ or Authority to hear, examine or determine any mat-
 ‘ ter or thing whatsoever in the said Court common-
 ‘ ly called the Star-Chamber, or to make, pronounce,
 ‘ or deliver any Judgment, Sentence, Order or Decree;
 ‘ or to do any Judicial or Ministerial Act in the said
 ‘ Court: (3.) And that all and every Act and Acts of
 ‘ Parliament, and all and every Article, clause, and
 ‘ Sentence in them, and every of them, by which any
 ‘ Jurisdiction, Power or Authority is given, Limited
 ‘ or appointed, unto the said Court commonly called
 ‘ the Star-Chamber, or unto all, or any the Judges, Of-
 ‘ ficers or Ministers thereof, or for any Proceedings
 ‘ to be had or made in the said Court, or for any mat-
 ‘ ter

ter or thing to be drawn into question, Examined or determined there, shall for so much as concerneth the said Court of Star-Chamber, and the power and Authority thereby Given unto it, be from the said first day of *August* Repealed and Absolutely Revoked and made void.

4. And be it likewise Enacted, That the like Jurisdiction now used and Exercised in the Court before the President and Council in the *Marches of Wales*; (2.) and also in the Court before the President and Council Established in the Northren parts; (3.) and also in the Court commonly called, the Court of the Dutchy of *Lancaster*, held before the Chancellour and Council of that Court; (4.) And also in the Court of Exchequer of the County Palatine of *Chester*, held before the Chamberlain and Council of that Court; (5.) The like Jurisdiction being Exercised there, shall from the said first day of *August*, one thousand six hundred, forty and one, be also Repealed and Absolutely Revoked, and made void, any Law, prescription, Custom or Usage, or the said statute made in the third year of King *Henry* the Seventh, or the statute made the one and twentieth of *Henry* the Eighth, or any Act or Acts of Parliament heretofore had or made, to the Contrary thereof in any wise notwithstanding: (6.) And that from henceforth no Court, Council, or place of Judicature shall be Erected, Ordained, constituted or appointed within this Realm, of *England*, or Dominion of *Wales*, which shall have, use or Exercise, the same, or the like Jurisdiction, as is or hath been used, practised, or Exercised in the said Court of Star-Chamber.

5. Be it likewise declared and Enacted by Authority of this present Parliament, That neither His Majesty, nor his Privy Council, have or ought to have any Jurisdiction, Power or Authority by *English* Bill, Petition, Articles, Libel, or any other Arbitrary

trary way whatsoever, to Examine or draw into question, determine or dispose of the Lands, Tenements, Hereditaments, goods, or Chattels of any of the Subjects of this Kingdom; but that the same ought to be tryed and determined in the ordinary Courts of Justice, and by the ordinary course of the Law.

6. And be it further provided and Enacted, That If any Lord Chancellor, or Keeper of the Great Seal of *England*, Lord Treasurer, Keeper of the Kings Privy Seal, President of the Council, Bishop, Temporal Lord, Privy Councillor, Judge or Justice whatsoever, shall offend, or do any thing contrary to the purport, true intent and meaning of this Law, Then he or they shall for such offence forfeit the sum of five hundred pounds of lawful Money of *England*, unto any party grieved, his Executors or Administrators, who shall really prosecute for the same, and first obtain Judgment thereupon, to be Recovered in any Court of Record at *Westminster*, by Action of Debt, Bill, Complaint, or Information, wherein no Essoign, Protection, Wager of Law, Aid-prayer, Priviledge, Injunction or Order of Restraint, shall be in any wise prayed, granted or allowed; nor any more than one Imparance: (2.) And if any person against whom any such Judgment or Recovery shall be had as aforesaid, shall after such Judgment or Recovery, offend again in the same, then he or they for such offence shall forfeit the Sum of one thousand pounds of lawful Money of *England*, unto any party grieved, his Executors or Administrators, who shall really prosecute for the same, and first obtain Judgment thereupon, to be Recovered in any Court of Record at *Westminster*, by Action of Debt, Bill, Complaint, or Information, in which no Essoign, Protection, Wager of Law, Aid-prayer, Priviledge, Injunction or Order of Restraint, shall be in any wise prayed, granted or allowed; nor any more than one Imparance: (3.) And if any person against whom

‘whom any such second Judgment or Recovery
‘shall be had as aforesaid, shall after such Judgment
‘or Recovery, offend again in the same kind, and
‘shall be thereof duly convicted by Indictment, In-
‘formation, or any other lawful way or means, that
‘such person so convicted, shall be from thenceforth
‘disabled, and become by virtue of this Act Inca-
‘pable, *ipso facto*, to Bear his and their said Office
‘and Offices Respectively; (4.) And shall be like-
‘wise disabled to make any Gift, Grant, Conveyance,
‘or other Disposition of any of his Lands, Tenements,
‘Hereditaments, Goods or Chattels; or to take any
‘Benefit of any Gift, Conveyance or Legacy to his
‘own use.

7. ‘And every Person so offending shall likewise
‘forfeit and lose to the party grieved, by any thing
‘done contrary to the true intent and meaning of
‘this Law, his treble Damages, which he shall sustain
‘and be put unto, by means or occasion of any such
‘Act or thing done, the same to be Recovered in any
‘of His Majesties Courts of Record at *Westminster*, by
‘Action of Debt, Bill, Plaint, or Information, where-
‘in no Essoign, Protection, Wager of Law, Aid-
‘prayer, Privilege, Injunction, or Order of Restraint,
‘shall be in any wise prayed, granted or allowed, nor
‘any more than one Impar lance.

8. ‘And Be it also provided and Enacted, That
‘if any person shall hereafter be Committed, Re-
‘strained of his Liberty, or suffer Imprisonment, by
‘the Order or Decree of any such Court of Star-
‘Chamber, or other Court aforesaid, now, or at any
‘time hereafter, having, or pretending to have the
‘same or like Jurisdiction, Power, or Authority to
‘Commit or Imprison as aforesaid: (2.) Or by the
‘Command or Warrant of the King’s Majesty, His
‘Heirs and Successors. in their own Person, or by the
‘Command or Warrant of the Council-board; or o
‘any of the Lords or others of His Majesties Privy
‘Council

'Council: (3.) That in every such Case, every per-
 'son so Committed, Restrained of his Liberty, or suf-
 'fering Imprisonment, upon demand or motion
 'made by his Council, or other Employed by him
 'for that purpose, unto the Judges of the Court of
 'King's-Bench, or Common-Pleas in open Court,
 'shall without delay, upon any pretence whatsoever,
 'for the Ordinary Fees usually paid for the same,
 'have forthwith granted unto him a Writ of *Habeas*
 '*Corpus*, to be directed generally unto all and every
 'Sheriffs, Gaoler, Minister, Officer, or other person in
 'whose Custody the person Committed or Restrained
 'shall be: (4.) And the Sheriffs, Gaoler, Mini-
 'ster, Officer, or other person, in whose Custody the
 'party so Committed or Restrained shall be, shall
 'at the Return of the said Writ, and according to
 'the command thereof, upon due and convenient
 'notice thereof given unto him, at the Charge of
 'the party who requireth or procureth such Writ,
 'and upon Security by his own Bond given, to pay
 'the Charge of carrying back the Prisoner, if he shall
 'be Remanded by the Court to which he shall be
 'brought; as in like cases hath been used, such Char-
 'ges of bringing up, and carrying back the Prisoner, to
 'be alwaies Ordered by the Court, if any difference
 'shall arise thereabout, bring or cause to be brought
 'the Body of the said Party so Committed or Re-
 'strained unto, and before the Judges or Justices of
 'the said Court, from whence the same Writ shall
 'Issue, in open Court: (5.) And shall then likewise
 'certifie the true Cause of such his Detainour or Im-
 'prisonment, and thereupon the Court within three
 'Court-daies after such Return, made and delivered
 'in open Court, shall proceed to Examine and De-
 'termine, whether the Cause of such Commitment
 'appearing upon the said Return, be Just and Legal,
 'or not, and shall thereupon do what to Justice
 'shall appertain, either by Delivering, Bailing, or
 'Remand-

Remanding the Prisoner: (6.) And if any thing shall be otherwise wilfully done, or omitted to be done by any Judge, Justice, Officer, or other Person aforementioned, contrary to the direction and true meaning hereof, then such person so offending shall forfeit to the party grieved, his treble Damages, to be Recovered by such means, and in such manner as is formerly in this Act limited and appointed for the like penalty to be Sued for and Recovered.

9. Provided alwayes, and be it Enacted, That this Act, and the severall Clauses therein contained, shall be taken and Expounded to Extend only to the Court of Star-Chamber: (2.) And to the said Courts holden before the President and Council in the Marches of *Wales*: (3.) And before the President and Council in the Northern parts: (4.) And also to the Court commonly called the Court of the *Dutchy of Lancaster*, holden before the Chancellor and Council of that Court: (5.) And also in the Court of Exchequer, of the County Palatine of *Chester*, held before the Chamberlain, and Council of that Court: (6.) And to all Courts of like Jurisdiction to be hereafter Erected, Ordained, Constituted, or Appointed as aforesaid; and to the Warrants and Directions of the Council-board, and to the Commitments, Restraints and Imprisonments of any person or persons made, commanded or awarded by the King's Majesty, His Heirs or Successors in their own Person, or by the Lords and others of the Privy-Council, and every one of them.

And lastly, Provided and be it Enacted, That no person or persons shall be Sued, Impleaded, Molested or Troubled for any Offence against this present Act, unless the party supposed to have so Offended shall be sued or Impleaded for the same within two years at the most after such time, where-
in the said Offence shall be committed.

The Comment.

THE Court of *Star-Chamber* (so called, because held in a Chamber at *Westminster*, the Roof of which is garnisht with Golden Stars) was not originally Erected, but confirmed and establisht by the Stat. of the 3 *H. 7. Ch. 1.* For there had before been some such Jurisdiction, as *Cook* observes 4. *Instit. fo. 62.* yet there is reason to believe, That it grew up rather by *Connivance* and *Usurpation*, than any due course of Law. The Crimes it pretended to punish were the Exorbitant Offences of Great Men, (whom Inferiour Judges and Jurors (though they should not) would in respect of their Greatness be afraid to offend) Bribery, Extortion, Maintenance, Champerty, Imbracery, Forgery, Perjury, Libelling, Challenges, Duels, &c. Their proceedings were by *English Bill*, and Process under the Great Seal; and the punishments by them Inflicted were *Fines, Imprisonment, Pillory, Cutting off Ears, &c.* But whatever pretences there were for the setting up this Court at first, 'tis certain it was made use of as a property of Arbitrary Power to Crush any whom the Ruling Ministers and Favourites had a mind to destroy; and indeed there were Three things in the very nature of this Court, which were destructive to the Original Constitution of our *English Government and Liberties.* 1. They proceeded without *Furies.* 2. They pretended to a Power to Examine men upon their Oaths touching Crimes by them supposed to be committed, which is contrary to all Law and Reason; For, *Nemo tenetur seipsum Accusare: No man is bound to accuse himself.* 3. The Judges of this Court proceeded by no known Law or Rules, but were left at Liberty to Act Arbitrarily, and according to their own pleasures; whereas the Law of *Engl.* hates to leave to any such an unlimited Power, but as it marks out the several species

of Crimes, such or such an Act shall be *Treason*; this *Felony*, that *petty Larceny*, &c. So it awards certain and positive punishments, proportionate to each of them. Therefore this Court being found a *Grievance* to the Subject, was by this Act dissolved and taken away.

And to the intent nothing of the like kind should by any other name be practised for the future, it is Declared and Enacted, That the King and His Privy Council shall not question or dispose of the Lands or Goods of any Subjects: And if they do, each Privy Counsellor or present forfeits 500*l.* to the party grieved.

A Clause in the Act of 31. Car. 2. C. 1.

Whereas by the Laws and Customs of this Realm, the Inhabitants thereof cannot be compelled against their wils to receive Souldiers into their Houses, and to sojourn them there, Be it Declared and Enacted by the Authority aforesaid, That no Officer, Military or Civil, nor any other person whatever, shall from henceforth presume to Place, Quarter or Billet any Souldier or Souldiers upon any Subject or Inhabitant of this Realm, of any degree, quality or profession whatever, without his consent; And that it shall, and may be lawful for every such Subject and Inhabitant, to refuse to Sojourn or Quarter any Souldier or Souldiers, notwithstanding any Command, Order, Warrant or Billeting whatever.

HAVING thus recited several of the most material Statutes provided by the care and wisdom of our Ancestors and prudent Legislators for the Guarding and Securing our *English Liberties*, I shall now for the Reader's Information, proceed to add certain other *Laws* of another nature. And first give the Reader all the Statutes at this day in force against *Protestant Dissenters* upon the account of Religion; And secondly, an Abstract of all the Laws against *Papists*.

And in order to the first of these, we begin with a Statute touching the Writ *De Excommunicato Capiendo*, upon which many people have been prosecuted. Which Act is as followeth:

Anno Quinto Regina Elizabethæ, Ca. 23.

An Act for the due Execution of the Writ
De Excommunicato capiendo.

FOrasmuch as divers persons offending in many great Crimes and Offences appertaining meerly to the Jurisdiction and Determination of the Ecclesiastical Courts and Judges of this Realm, are many times unpunished for lack and want of the good and due Execution of the writ de Excommunicato Capiendo, directed to the Sheriff of any County, for the taking and apprehending of any such Offenders: (2.) The great abuse whereof, as it should seem, hath grown, for that the said writ is not Returnable in any Court, that might have the Judgment of the well Executing and serving of the said writ, according to the Contents thereof; (3.) But hitherto have been left only to the discretion of the Sheriffs and their Deputies, by whose Negligences and Defaults, for the most part, the said writ is not Executed upon the Offenders as it ought to be: (4.) By reason whereof, such Offenders be greatly encouraged to continue their sinful and criminous Life, much to the displeasure of Almighty God, and to the great contempt of the Ecclesiastical Laws of this Realm.

2. wherefore, for the redress thereof, be it enacted by the Queens Most Excellent Majesty, with the assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same; That from and after the first day of May next coming, every writ of Excommunicato Capiendo, that shall be granted and Awarded, out of the high Court of Chancery against any person or persons within the Realm of England, shall be made in the time of the Term (2.) And Returnable before the Queen's Highness, Her Heirs, and

and Successors in the Court commonly called the King's Bench, in the Term next after the Telle of the same Writs (3.) and the same writ shall be made to contain at the least twenty days between the Telle and the Return thereof; (4.) And after the same writ shall be so made and sealed, that then the said writ shall be forthwith brought into the said Court of King's Bench, and there in the presence of the Justices, shall be opened and delivered of Record to the Sheriff or other officer, to whom the serving and Execution thereof shall appertain, or to his or their Deputy or Deputies; (5.) And if afterwards it shall or may appear to the Justices of the same Court for the time being, that the same writ so delivered of Record, be not duly returned before them at the day of the return thereof; or that any other Default or Negligence hath been used or had, in the not well serving and Executing of the said Writ, that then the Justices of the said Court shall and may by Authority of this Act, Assess such Amerciaments upon the said Sheriff or other Officer in whom such Defaults shall appear, as to the discretion of the said Justices shall be thought meet and convenient; which Amerciaments so Assessed, shall be Estreated into the Court of Exchequer, as other Amerciament have been used; and that the Sheriff or other Officer to whom such Writs of Excommunicato Capiendo, or other Process by virtue of this Act, shall be directed, shall not in any wise be compelled to bring the Body of such person or persons, as shall be named in the said writ, or Process, into the said Court of the King's Bench at the day of the Return thereof; (2.) But shall only Return the same writ and Process thither, with Declaration briefly how and in what manner he hath served and Executed the same, to the intent that thereupon the said Justices may then

then further therein proceed, according to the Tenour and Effect of this present Act.

4. And if the said Sheriff or other Officer to whom the Execution of the said writ shall so appertain, do or shall Return, that the party or parties named in the said writ, cannot be found within his Bailiwick, that then the said Justices of the King's Bench for the time being, upon every such Return, shall Award one writ of Capias against the said Persons or Persons named in the said writ of Excommunicato Capiendo; (2.) Returnable in the same Court in the Term-time, two monthes at least next after the Teste thereof; (3.) With a Proclamation to be contained within the said writ of Capias, that the Sheriff or other Officers, to whom the said writ shall be directed, in the full County-Court, or else at the General-Assizes and Goal-delivery to be holden before within the said County, or at a Quarter-Sessions to be holden before the Justices of the Peace within the said County, shall make open Proclamation ten daies at the least before the Return, that the party or parties named in the said writ, shall within six days next after such Proclamation, yield his or their Body or Bodies to the Prison of the said Sheriff or other such Officer, there to remain as a Prisoner according to the Tenour and Effect of the first writ of Excommunicato Capiendo, upon pain or forfeiture of ten pounds: (4.) And thereupon after such Proclamation had, and the said six days past and expired, then the said Sheriff or other Officer, to whom such writ of Capias shall be directed, shall make Return of the same writ of Capias into the said Court of the King's Bench, of all that he hath done in the Execution thereof, and whether the party named in the said writ, have yielded his Body to Prison or not.

5. And if upon the Return of the said Sheriff, it shall appear, that the party or parties named in the same writ

Writ of Capias, or any of them, have not yielded their Bodies to the Goal and Prison of the said Sheriff, or other Officer, according to the Effect of the same Proclamation; that then every such person that so shall make default, shall for every such default forfeit to the Queen's Highness, Her Heirs and Successors ten pounds, (2.) Which shall likewise be Estreated by the said Justices into the said Court of Exchequer, in such manner and form as fines and Amerciaments there taxed and assessed, are used to be.

6. And thereupon the said Justices of the King's Bench shall also award forth another *Writ of Capias* against the said person or persons that so shall be Returned to have made default, with such like Proclamation, as was contained in the first *Capias*, and a pain of twenty pounds, to be mentioned in the said second *Writ* and Proclamation: (2) And the Sheriff, or other Officer, to whom the said second *Writ*, of *Capias*, shall be so directed, shall serve and Execute the said *Writ*, in such like manner and form, as before is Expressed for the serving and Executing of the said first *Writ* of *Capias*. (3.) And if the Sheriff or other Officer shall return upon the said second *Capias*, that he hath made the Proclamation according to the tenour and Effect of the same *Writ*, and that the party hath not yielded his Body to Prison, according to the Tenour of the said Proclamation; that then the said party that so shall make default, shall for such his contempt and default, forfeit to the Queen's Highness, Her Heirs and Successors, the Sum of twenty pounds; (4.) which said Sum of twenty pounds, the said Justices of the King's Bench for the time being, shall likewise cause to be Estreated into the said Court of Exchequer, in manner and form aforesaid.

7. And then the said Justices shall likewise Award forth another *Writ* of *Capias* against the said party, with such Proclamation and pain of forfeiture, as

was contained in the said second writ of Capias: (2.) And the Sheriff or other Officer to whom the said Third writ of Capias shall be so directed, shall serve and Execute the said writ of Capias, in such like manner and form as before in this Act is expressed and declared, for the serving and Executing of the said first and second writs of Capias: (3.) And if the Sheriff or other Officer to whom the Execution of the said third writ shall appertain, do make Return of the said third writ of Capias, that the Party upon such Proclamation hath not yielded his Body to Prison, according to the Tenour thereof, that then every such party for every such contempt and default, shall likewise forfeit to the Queen's Majesty, Her Heirs and Successors, other twenty pounds: (4.) which Sum of twenty pound shall likewise be Estreated into the said Court of the Exchequer, in manner and form aforesaid: (5.) And thereupon the said Justices of the King's Bench shall likewise Award forth one writ of Capias against the said party, with like Proclamation or, and like pain of forfeiture of twenty pound: (6.) And that also the said Justices shall have Authority by this Act, infinitely to Award such Process of Capias, with such like Proclamation and pain of forfeiture of twenty pound as is before limited, against the said party, that so shall make default in yielding of his Body to the Prison of the Sheriff, until such time as by return of some of the said writs before the said Justices, it shall and may appear, that the said party hath yielded himself to the custody of the said Sheriff, or other Officer, according to the Tenour of the said Proclamation: (7.) And that the party upon every default and contempt by him made against the Proclamation of any of the said writs so infinitely to be Awarded against him, shall incur like pain and forfeiture of twenty pound, which shall likewise be Estreated in manner and form aforesaid.

8. And be it further enacted by the Authority aforesaid, That when any person or persons shall yield his or their Body or Bodies to the hands of the Sheriff, or other Officer, upon any of the said Writs of Capias, that then the same party or parties that shall so yield themselves, shall remain in the Prison and Custody of the said Sheriff, or other Officer, without Bail, Baston or Mainprise, in such like manner and form, to all intents and purposes, as he or they should or ought to have done, if he or they had been apprehended and taken upon the said Writ of Excommunicato capiendo.

9. And be it further Enacted by the Authority aforesaid, that if any Sheriff or other Officer, by whom the said Writ of Capias, or any of them shall be Returned, as is aforesaid, do make an untrue Return upon any the said Writs, that the party named in the said Writ, hath not yielded his Body upon the said Proclamations, or any of them, where indeed the party did yield himself according to the Effect of the same, that then every such Sheriff or other Officer, for every such false and untrue Return, shall forfeit to the party grieved, and damnified by the said Return, the Sum of 40 l. (2.) For the which Sum of 40 l. the said party grieved shall have his Recovery and due Remedy by Action of Debt, Bill, Plaint, or Information, in any of the Queens Courts of Record, in which Action, Bill, Plaint, or Information, no Essoign, Protection or Wager of Law shall be admitted or allowed for the party Defendant.

10. Saving and Reserving to all Arch-Bishops and Bishops, and all others, having Authority to certifie any person Excommunicated, and like Authority to accept, and receive the submission and satisfaction of the said person so Excommunicated; in manner and form heretofore used; (2.) And him to Absolve, and Release, and the same to signify, as

heretofore it hath been accustomed, to the Queen's Majesty, Her Heirs and Successors, into the High Court of Chancery, (3.) And thereupon to have such Writs for the deliverance of the said person so absolved and released from the Sheriff's Custody or Prison, as heretofore they, or any of them had, or of right ought, or might have had; any thing in this present Statute specified or contained to the contrary hereof in any wise notwithstanding.

II. Provided alwayes, That in Wales the Counties Palatines of Lancaster, Chester, Durham, and Ely, and in the Cinque Ports, being Jurisdictions and places Exempt, where the Queen's Majesty's Writ does not run, and process of Capias, from thence not Returnable into the said Court of the King's Bench, after any Significavit, being of Record in the said Court of Chancery; The Tenour of such Significavit by Mittimus shall be sent to such of the Head Officers of the said Country of Wales, Counties Palatines, and places Exempt, within whose Offices, Charge or Jurisdiction, the Offenders shall be Resiant; that is to say, to the Chancellour or Chamberlain for the said County Palatine of Lancaster and Chester, and for the Cinque-Ports, to the Lord Warden of the same, and for Wales and Ely, and the County Palatine of Durham, to the Chief Justice or Justices there: (2.) And thereupon every of the said Justices and Officers, to whom such Tenour of Significavit with Mittimus shall be directed and delivered, shall by virtue of this Estatute, have Power and Authority, to make like Process to the Inferiour Officer, and Officers, to whom the Execution of Process there doth appertain, Returnable before the Justices there, at their next Sessions or Courts; two Moneths at the least after the Teste of every such Process: (3.) So alwayes, as in every degree they shall proceed in their Sessions and Courts against the Offenders, as the Justices of the said Court of King's Bench

Bench are Limited by the Tenour of this Act, in Term-times to do and Execute.

12. Provided also, and be it Enacted, That any person, at the time of any Process of Capias aforementioned, Awarded, being in Prison, or out of this Realm in the parts beyond the Sea, or within Age, or of non sanæ memoriæ, or woman Covert, shall not incur any of the pains or forfeitures aforementioned, which shall grow by any Return or Default happening, during such time of Nonage, Imprisonment, being beyond the Sea, or non sanæ memoriæ: (2.) And that by virtue of this Estatute, the party grieved may plead every such cause or matter in bar of, and upon the distress, or other Process that shall be made for Levying of any of the said pains, or forfeitures.

13. And if that the Offender against whom any such Writ of Excommunicato Capiendo shall be Awarded, shall not in the same Writ of Excommunicato Capiendo, have a sufficient and lawful addition according to the form of the Statute of Primo of Henry the Fifth, in cases of certain Suits, whereupon Process of Exigent are to be Awarded: (2.) Or if in the Significavit it be not contained, that the Excommunication doth proceed upon some cause or contempt of some Original matter of Heresie, or refusing to have his or their child Baptized, or to receive the Holy Communion as it is now commonly used to be Received in the Church of England, or to come to Divine Service, now commonly used in the said Church of England, or Errour in matters of Religion, or Doctrine now received and allowed in the said Church of England, Incontinency, usury, Simony, Perjury in the Ecclesiastical Court, or Idolatry. (3.) That then all and every pains and forfeitures limited against such persons Excommunicate by this statute by reason of such Writ of Excommunicato capiendo, wanting sufficient Addition, or of such

such Significavit, wanting all the Causes afore mention-
ed, shall be utterly void in Law; (4.) and by way of
Plea to be allowed to the party grieved.

14. And if the Addition shall be with a Nuper of
the place, Then in every such case, at the Awarding
of the first Capias with Proclamation according to
the form mentioned, one Writ of Proclamation (with-
out any pain expressed) shall be Awarded into the
County, where the Offender shall be most commonly
Resiant at the time of the Awarding of the said first
Capias with pain, in the same Writ of Proclamation,
to be returnable the day of the return of the said first
Capias, with pain and Proclamation thereupon at some
one such time and Court, as is Prescribed for the Pro-
clamation upon the said first Capias with pain: (2.)
And if such Proclamation be not made in the County
where the Offender shall be most commonly Resiant, in
such cases of Addition of Nuper, that then such Of-
fenders shall sustain no pain or forfeitures by virtue of
this Statute, for not yielding his or her body, according
to the Tenour afore-mentioned, any thing before specified,
and to the Contrary hereof in any wise Notwithstand-
ing.

The Comment.

With a Discourse of the Nature of Excommunication,
and how to prevent or take off the Writ

De Excommunicato Capiendo.

THOUGH Excommunications pretend a Title
Jure Divino, as an Institution of Christ, and
therefore his Sacred Name is therein made use of, and
several other Spiritual Phrases, purporting that the
same, and all proceedings thereunto, are by his Au-
thority; yet they being so commonly thundered out,
by persons who have immediately no Authority from
our Lord, or his Word, to manage them; and for
such trivial Crimes as no Law of God hath ordered
them

them against, and in such a Light and precipitant manner, as no part of Holy Scripture warranteth: The wiser sort of men do therefore look upon them rather as Excommunicings, or a sort of Civil punishment, like that in use among the Romans, Interdico tibi aqua et igni, than one of the solemn Institutions of God. And therefore waving any discourse of what Spiritual Influence or Effect may be dreaded from the same in our dayes, which we hope are wise enough not to be Bug-Bear'd with that Maxim of the Canonists Excommunicatio sine Justa, sine Injusta est timenda; A Church-Curse, be it Just, or Unjust, is to be feared. All that we shall speak to is matter of Law, for so it is that there are Legal Bars and punishments formed by our Temporal Laws, as long as the Legislative Power shall nor be at leisure to consider of them, and (if they find it requisite) Repeal them. For,

1. A person Excommunicated is forthwith disabled to Sue in any of His Majesties Courts; not that thereby he loses his Right for ever, but the Excommunication may be pleaded in Abatement of his present Action, till the same is taken off by an Absolution. Yet note, That whosoever is Instrumental in procuring, soliciting, decreeing or pronouncing the Excommunication, shall never be allowed to plead it; nor shall it be pleaded, unless the Excommunication be signified by the Bishop himself; for the Court will receive no Certificate from any to whom they cannot write to Absolve the person, if they find cause.

2. Likewise, though a person Excommunicated may be appointed an Executor, and is capable of having a Legacy given him, yet so long as he stands Excommunicated, he is not to be allowed to prove the will, nor Sue for his Legacy in the Spiritual Court. But note, whereas some say a man Excommunicated cannot Marry; 'tis Non-sense, for Marriage is de Jure Naturali, and alike absurd it is for any to pretend that such a person cannot give his Suffrage in any Election.

Election; as for Example of *Parliament-men*, for the same is an idle dream; the Law allows him a Voice, so long as he hath a Free-hold of Forty Shillings per Annum, though he were under forty Curses.

3. If a person (justly or unjustly) Excommunicated, continue so by the space of forty dayes then by the Common Law, the Bishop certifying the same into Chancery, (which is called a *Significavit*) there shall issue forth a Writ from thence to the Sheriff of the County where the party lives, to Imprison him without *Bail* or *Mainprize*, till he hath made satisfaction to Holy Church.

This is called a Writ *de Excommunicato Capiendo*, and such Imprisonment of a person Excommunicated by a Civil Sanction, is not practised in any Nation in the world but ours, and if it had here too been *Buried* with its Brother *de Hæretico Comburendo*, I believe it would have had few Tears at its Funeral. But at Common Law the same Writ being not Returnable in any Court, the Sheriffs took their own time, and used their discretion in Executing it; to inforce which, this Statute was made, whereby it is Enacted.

1. That the said Writ shall be Returnable in the *King's Bench*, yet the Sheriff need not bring thither the Body.

2. If the Sheriff Return *Non est Inventus*, a *Capias* shall be Awarded with Proclamation, to come in with six dayes; if the party do not, he forfeits 10*l.* and thenceforwards *Capias* after *Capias*, and 20*l.* forfeited on each.

3. But note, there are two Cases in which though a man stands out never so many Proclamations, he shall forfeit nothing. And they two are these.

1. Where the, Party against whom the VVrit *De Excommunicato Capiendo* is Awarded, hath not therein a sufficient and lawful Addition; That is (saith Cowel) *a Title over and above his Christian and Surname, shewing his State, Degree, Trade, Occupation, or Mystery (as Lord,

Lord, Knight, Gentleman, Yeoman, Clothier, and the like) and the Hamlet, Town, Parish, and County where he is, or lately was conversant and dwelling. And if it be with a Nuper [late of such a place] then you see there must be made out one Capias without any penalty.

2. VVhere it is not expressed in the Bishops Certificate, that the Cause for which the party was originally Cited into the Spiritual Court, was for one of these 10 Causes following, viz. 1. Heresie; 2. Refusing to have Children Baptized; 3. Refusing to Receive the Communion; 4. Refusing to come to Divine Service; 5. Error in Religion or Doctrine; 6. Incontinency; 7. usury; 8. Simony; 9. Perjury in the Ecclesiastical Court; or 10. Idolatry.

To know whether there be such cause expressed, you may have a Copy of the Significavit at the Curstors Office in Chancery-Lane.

Then in either of these cases, all pains and forfeitures limited by this Statute by reason of such VVrit of Excom. Cap. wanting such an Addition or Significavit, wanting all the causes aforesaid, shall be utterly void in Law, and by way of plea to be allowed to the party grieved.

Touching the Authority of the Courts called Spiritual or Ecclesiastick, whether they have truly any at all by our present Laws, I shall not here debate; they that have a mind to hear what is to be said on that Theme, may read Mr. Hickeringil's Book of Naked Truth, or Mr. Henry Care's Book written in the year 1664. entituled, A true Guide for all persons concerned in Ecclesiastical Courts; neither of which I ever yet saw sufficiently Answered; yet still since most certain it is, that such Courts do proceed and Act, we shall suppose them to have some Power, and only inform our Reader of the course of their practice, as it is used at this day, and his best course to defend himself.

You

You must note, that persons are usually Excommunicated upon Contempt, or Contumacy, which may be,

1. If the party being duly Cited, Denieth, or Omitteeth to appear. For if he be not personally summoned, he needs not appear the first time; but then their way is to Cite him by a Writ called *Vais & Modis*, set up at the Doors of his House, or at the Church Doors, Citing him at a certain day to appear to answer, &c. But (being personally Cited) if he doth not appear the first time, or whether he be or no, if he doth not appear the second time, he is Excommunicated for Contempt. If he be Cited generally: the Law is, That he shall appear the third day after the Service of the Citation. The Law also is, that if he will give the Apparator 6d. he must bring him the full and true Copy of the Citation. If a day of appearance be mention'd, and the same be not at least the third day from the Citation; or if he hath before witnesses given the Apparator 6d. to bring him a full and true Copy of the Citation, and he doth not, I conceive, he needs not appear, but listen what they do; and if they decree him Excommunicated, he may Appeal within 15 daies, and bring from the Superiour Court, an Inhibition to stop their proceedings against him. And further, the Rule in that Law is, *Totus dies debetur Delinquenti*. It is enough for a person to appear any hour of the day (provided it be a Court-hour) wherein he is Cited to appear; so as though he be called before he comes, yet if he appeareth that day, he shall be discharged, or he may Appeal.

2. When he appeareth, he shall demand his Charge, which is either by a Presentment from Church-wardens, or by a Libel, or Articles; which are exhibited by a Promoter. Be it which it will, he shall demand a Copy; if it be denied or delayed, he may bring, if he will, a Prohibition from the King's Court at Westminster, forbidding them to proceed in that Cause,

Cause, till they have given a full and true Copy of his Charge, according to the Statute of 2 Hen. 5. c. 3.

If he appeareth in person, he ought to have his Charge the first Court-day; if he appeareth by a Proctor, they will usually (to get the Proctor more Fees) give to the second Court-day, to bring in the Libel or Articles.

4. If they deliver him not his Charge the second Court-day, he may Appeal, if upon his demand the Judge will not dismiss him; or he may, if he will, bring his Prohibition, for want of Articles, and stop their further proceedings.

5. If the proceedings be upon a Promotion, and the Promoter hath Employed a Proctor in the Case, the party accused must know, that no Proctor can be admitted without a Proxy, that is, Letters Procuratory under the Promoter's Hand and Seal, authorizing him to act for him in the Case; and when he hath that, there must be an Act entered in Court to admit such a person Proctor in the Case. The party charged may go or send to the Register, and demand a sight of both those; the Reason in Law is this, because any Proctor is liable to the Parties Action, if he molesteth any person in the name of another, without Authority from him. And secondly, if there be no Act of Court admitting him as a Proctor, though the party accused be Conqueror in the case, yet he cannot Recover Costs, because there is no Legal Adversary, against whom they can be Recovered.

6. According to the Statute-Law, Every Informer, if overthrown, shall pay charges. According to the Civil and Canon Law, none ought to be admitted as a Voluntary Promoter, till he hath given security to pay the Charges. If overthrown, The Party Accused therefore shall before he answereth the Articles, demand this; if it be denied by the Judge, he may Appeal to the Superiour Court. It is also worth the persons

persons Enquiry who is Accused, to be well advised whether the *Promoter* in the *Ecclesiastical Courts*, be not obliged to all those things, that an *Informer* in the *Secular Courts* is tied to; by the Statutes 31 *Eliz.* 5. 18. *Eliz.* 5. 21. *Jac.* 4. The Reason is, because those Statutes say, *Informers upon any Penal Statutes*, and commonly *Promoters* in the *Ecclesiastical Courts*, say such and such things are done contrary to the Statutes of this Realm, as well as contrary to the *Canons*: now what things the Statutes, which also name *Promoters*, Require of such *Informers* and *Promoters*, the Statutes do declare.

7. VVhen the Party Accused hath a Copy of his *Libel*, let him demand time to answer; If the Judge denies him time (at least till the next Court-day) let him Appeal; Having due time granted, in the mean time let him duly consider the matter and form of his *Libel*. As to which let him amongst other things observe these that follow.

1. VVhether the matters he be Charged with, belong to the Cognisance of the *Ecclesiastical Court*? If *Lawyers* tell him no, let that be his Answer, and let him hasten to bring his *Prohibition*, which Lies in all such Causes.

2. VVhether they have put into the *Libel* the *Promoters Petition for Right and Justice* to be done him: it is oft times left out. It is a Rule in their Law, *Libellus est ipso Jure nullus, ubi nihil Petitur*. If he finds that this is wanting, let his Answer only be That the *Libel* is in Law utterly void, and Insufficient, and desire to be dismissed: If the Judge refuseth to dismiss him, let him Appeal.

3. Let him also Observe, whether he be in the Articles laid to be one of the *Diocess*, or a *Parishoner* of such a *Parish*, for it be not laid, it can never be proved, and so the *Promotor* must fail in his Suit; for what is not laid, cannot be proved: *Quicquid deponitur Extra Articulum, deponitur Extra Legem*, is a Rule in their Law.

Law. If he be said to be a Parishioner of such a place, within such a diocess, let him not in his Answer Confess it but say, He cannot determine the Bounds of Diocesses and parishes, but for that he Referreth himself to the Law.

4. Let him also observe, if the things he be Charged to have done, or omitted, be within the compass of a year, and whether there hath been since no Act of Grace or Oblivion, which hath pardoned them; and whether they be not such things as he hath been punished for, or such things as the Statute-Law hath Limited the prosecution of to a less time than a year: For if any of these things be, they may be given in answer to avoid either the whole, or any part of the Charge. If the Judge will not accept the Answer, the party may Sue out a Prohibition and stop them.

5. Let him also observe, whether he be charged certainly or particularly, as to time and place, or only generally and incertainly; if he be charged only generally, as for the most part he is, in Church-VVardens Presentments, not mentioning time and place; or incertainly with Or's, that he did not come to his Parish-Church, such and such months and daies, or was absent in some one, or more, or most of them: Let his Answer be, that this Charge is void in Law, for the generality or incertainty of it. If the Judge will not Receive his Answer, let him Appeal; for the Law of England alloweth no such Charges, from which can be no Discharge, or where the Crime is not fixed to a certain time. But it may be, in this Case, a Prohibition will be his best Remedy.

6. Let him observe, whether he be charged only upon Statute-Law, or upon Canons; if upon Canons, let him in his Answer modestly refer himself to Persons Learned in the Statute-Laws, whether any such Canons were ever Enacted, Ratified, Allowed, or Confirmed by Parliament, or by the Established Laws of the Land, as they stood in the year 1639. and if not, whether they be not made void by the Statute 13. Car. 2.

10. VVhen

10. When he hath given his Answer, which must be subscribed by his own hand, it is usual for the *Adversary Proctor* to demand a time to prove his Articles, for which the Judge at his pleasure granteth two, three, four, or six Court-daies (usually but two) let him also at the same time move, that he may have liberty within that time also, to produce any Witnesses for his Defence; if it be denied, let him Appeal.

11. Let him observe, what time the Judge setteth his Adversary to produce his Witnesses in Court, and whom he names for Witnesses for him. Let him also desire a time to be set in Court for him to produce his *Witnesses*, and be careful to bring them at the time, for they must all be sworn in the Court, then Examined privately by the Register. Unless the Adversary desireth a *Commission to Examine Witnesses*, (which is not often done, because it is much more Chargeable) in that Case, there are no Witnesses in the Court produced and Sworn, but before those Commissioners.

12. If the party Defendant will, he may deliver in to the Register *Interrogatories*, upon which the Register shall Cross-Examine his Adversaries *Witnesses*. But he must be very wary as to this, for he shall not afterward Except against any of his Adversaries *Witnesses*, whom he hath Cross-Examined, and made *Witnesses* for himself.

13. Let him Advise his own witnesses to be very careful, that the Register setteth down what they say, in their own words, that under the pretence of putting them into a decent phrase, their whole sense be not altered.

14. When the time Probatory, set at first by the Judge, is expired, let him desire of the Judge, *Publication*. If the Judge will grant longer time to prove, let him desire the Advantage of the same time also, to bring more *Witnesses* for himself, which he may, or may not, make use of as he pleases. If once the

the Term given for proof be Expired, let him desire Publication & Liberty to take out a Copy of the depositions.

15. VVhen he hath got a Copy, let him diligently observe, if he can prove any thing contrary to what the VVitnesses, or any of them have sworn; if he can, let him at the next Court-day, offer a paper of general & Particular Exceptions, shewing the Particulars which he Excepteth against in their depositions severally, as well as his general Exceptions against them all. Let him desire a time to bring in witness, to prove his Exceptions. If the Judge refuseth to admit his Exception, or to give him due time to prove them, he may again Appeal.

16. VVhen once the Promoter hath Allowed to have Publication, he may again move for time, to invalidate the proof of the Exceptions, but not to fortifie his first proof. If any Liberty of that Nature be desired, the defendant may Appeal; for unless in a case for the King after Publication, no new VVitnesses can be produced.

17. VVhen the party against whom the Promotion is, peruseth the deposition, let him strictly observe, whether the particulars he is charged with be proved by two witnesses; for it is a Rule in their Law, *Per unius est pro Nullius*, and if the Judge will admit the thing proved by one witness a Prohibition Lyes: for the Kings Judges, will not only see, that those Courts shall keep to matters truly belonging to their Jurisdiction; but also that in the prosecution of them, they shall keep to the Received Rules of their own Law, in those main points of proof, &c.

18. It is an usual thing upon presentments by Church VVardens, when the party presented calls for proof of the presentment, to tell them, That the Church warden's presentment is a Conviction, they being sworn Officers. But this is contrary to the Law of England, which alloweth no presentment by Officers ex Officio to be a Conviction. If Grand Jurors at Assizes and Sessions do present, this is no conviction, but the persons must after this be indicted, and proof made by VVitnesses. If there

therefore the Ecclesiastical Court Insists on this, the person may appeal; or (which it may be is better) he may have a *prohibition* from the *Kings Court at Westminster* as some greater Lawyers think.

19. VVhen the *time for proof* is Expired, and *Publication* made, and *Exceptions* given in and proved, and *Publication* of those proofs also made; either party may move for a time to be set to Conclude, and to give the Judge *Information* of the whole state and merit of the Case, and also to give Sentence in it.

20. At the day set, the Party Accused, or Promoted against, may Appear, and shew to the Judge the whole state of the Case, and plead it himself; or, if he will, by an *Advocate*, if any be at hand; or for ought I know, if there be none by *Attorneys* or *Counsellor* at *Common-Law*; after which the Judge will appoint upon desire a day to give sentence.

22. At that day the Party must have a form of: an *Absolatory Sentence*, ready to tender to the Judge, if the Judge give Sentence against him he may appeal within 15 days, by virtue of the statute, 24. Hen. 8. 12.

22. All along the *Prosecution*, the person against whom the *Prosecution* is, shall do well after every Court, to get the *Acts of the Courts in his Case*, under the *Registers hand*, and to keep them by him carefully. So much I thought fit to add here for the Readers Instruction, how to behave and Conduct himself when Troubled in those Courts, because 'tis a practice very little understood, by means whereof greedy *Proctors*, *Solicitors* and other ill men frequently make a prey of honest people therein concerned.

I shall now Recount the ways and means how to get off from the *VVrit De Excommunicato Capiendo*.— VVe told you before, no *Bail* would be accepted, nor will an *Habeas Corpus* avail you, (unless you have a mind only to change the Prison) nor does a *Prohibition* or *Homine Replegiando* Lie. But the several ways to help (according as the Case happens) are as followeth;

If

1. If the Party imprisoned hath brought a PROHIBITION, by which the Ecclesiastical Court hath been commanded to proceed no further, and to absolve the Person, if Encommunicated, and the Judge hath disobeyed the writ, and signified and procured the Party to be imprisoned, the person that is imprisoned at any time in Term, upon a Motion, shall have first an Attachment against the Judge, and then a Writ of Superedeas to the Sheriff, to deliver the Prisoner to follow the Attachment, without any Submission to the Bishop at all, or any Caution. Such Writ may be found in the Register of Original writs, pag. 66. Nay if the Attachment be granted, and the Person be Imprisoned, or a Writ out, commanding him to be taken, and the Term be done before the Attachment can be served, the Register tell us, that he shall have the same Writ during the Vacation out of Chancery: Nay, it is the Opinion of men skilled in the Law, that he shall have such a Superedeas, upon Affidavit made, that the proceedings are contrary to a Prohibition served upon the Judge, though no such Attachment be taken out.

2. If the Party imprisoned, or against whom the writ is to take him, though he be not taken, hath appealed according to the Statute, 24 Hen. 8. 12. If he bringeth into the Court of Chancery an Authentick copy of his Appeal, he shall have a Writ of Superedeas to stop the Sheriff from apprehending him, or to deliver him if he be apprehended, only this must be within a Year after his Appeal, that it may appear to the Court, he hath not deserted his Appeal; you may find forms of such a Superedeas also in the Register of Original Writs; both these are founded upon excellent Reason. The Law of England will not suffer Ecclesiastical Judges, either to invade their Right, or to exalt themselves against their Authority, nor yet suffer Inferiour Ecclesiastical Courts to invade the Right, Power, and Authority of Superiour Courts in their own Order.

3. If a Person be sued in the Ecclesiastical Courts for a matter

matter not within their Jurisdiction, and they have caught him upon contempt, in not appearing or not obeying their Sentence: Upon a suggestion to the Kings Courts, if it appear to them, that the Original matter was not cognoscible in the Ecclesiastical Courts, they will supersede the Proceedings, and order the imprisoned Person to be discharged.

4. If the imprisoned Person, or he against whom the writ is out, though he be not taken, bring a Copy of the Bishops Significavit into the Courts at Westminster, and make it appear to the Judges there, that the cause of Excommunication is not therein expressed, together with the day when it was pronounced, if he be not said to be excommunicated *Majori Excommunicatione*; if it be not signed by the Bishop, or said to be done *Auctoritate nostra ordinaria*; if the Party Excommunicated be not expressed by name, the Court will deliver the person. Dr. Cowen mentions three of these cases, and the Reader also may find them in the Register of writs. The first he saith he cannot find in the Register, viz. That the Articles or matter of the Libel must be expressed, nor indeed do I find it there, but it is in several Reports. The reasons are, 1. Because the Law will not suffer men to be imprisoned for every light offence, (this Dr. Cowen gives) 2. Because the Kings Courts can receive Significavits from none but the person to whom (if need be) they may write to discharge the Prisoner: Nor will the Court suffer a person to be Excommunicated, and lye in Prison for a Crime which the Ecclesiastical Court hath no judgment in, nor yet unless it appeareth to the Court, he hath stood Forty dayes excommunicated. Again he therefore whole Cities and Communities have been excommunicated, therefore the person must be expressed by name, or he shall not lie there.

5. Let him procure the Copy of the *Writ de Excommunicato Capiendo* and observe, first, if it be issued in Term-time. 2. If there were full twenty days betwixt the

the Test and Return. 3. If it be made Returnable the next Term. 4. If there be due Additions in it. 5. If before it was delivered to the Sheriff, it were Entered upon Record in the Kings Bench, and made Returnable into that Court. All these things are Required by the Statute 5 Eliz: 23; If any of these Errors be found, he shall upon motion in the Kings Bench be discharged, and the Writ will be declared Illegal. *admittenda* to know
 Lastly, If he can be delivered by none of these ways, he may at any Sealing in the Chancery whether it be in Term, or out of Term, upon a petition to, or motion before the L. Chancellor have the *Writ de Cognitione Admittenda*, granted him (in case he hath before offered the Bishop a Bond of 10. for *Writ de Cognitione* with Sureties *stare & parere mandatis Ecclesie in forma Juris*) when he hath it, let him by some Attorney, or Attorneys Clerk send it, and tender a Bond and Sufficient Sureties with it to the Bishop, and demand the Discharge of the Prisoner; If it be not presently done, let him certify so much, and at the next Seal move for a second Writ to the Bishop; or (which it may be is more adviseable) let him move for a second Writ to the Sheriff, (the form of it is in the Register.) In that the King commandeth the Sheriff to admonish the Bishop to accept the *Ediction*, & to deliver the Prisoner, and further commands him, that in case he doth it not in his presence, the Sheriff should do it himself. If the Sheriff yields not Obedience, upon another Motion, he ought to have a Writ to the Coroners, commanding to take security of the Sheriff to appear at *Westminster* such a day, to shew reason why he hath contemned the Kings Writ, and further it commandeth the Coroners to take the Custody of the Prisoner, and to deliver him. The Reader may find all this in the Register where are the Form of all these Writs, and also in Dr. Coxens *Apology*, p. 1. C. 2. who being himself a Judge in the Ecclesiastical Courts, cannot be presumed to have told us any thing

thing but what is *Law*; contrary to their own Interest.

It is true, the Bishop upon taking such *Cautionary Bonds*, doth ordinarily Insist upon the persons paying the Prosecutors charges, but it is unreasonable, 1. Because he hath nothing to do but to Execute the Command of the Writ, which speaks not a word of charges. 2. Because if the charges be legally due, the Promoter must have also a legal way to Recover them; if not, it is Extortion for the Ecclesiastical Judge to Exact them. 3. Because it is no sufficient Return to the King's Writ, which mentioneth no such thing, to say, He could not discharge the Prisoner, because he would not pay the Promoter's Charge.

But because the Legal Charges are small, usually the Prisoner for his Liberty will pay the charges, which are as follow.

For the Adversary's, Proctor every Court-day until he was Excommunicated, and that day when the <i>Significavit</i> was decreed: For every day	l.	s.	d.
For the Proctor's Procuratory Letter, Seal and VVax.	00	01	00
For certifying the Service of the Citation	00	00	06
For the Articles, if there were any	00	03	00
For an Act of Court, for every day	00	00	02
For the <i>Significavit</i>	00	05	00
For the <i>Significavit</i> to deliver the Prisoner	00	05	00
For the Excommunication and the Schedule	00	02	04
For the VVrit de Excommunicato Capiendo, and the charge of Entering it upon record in the King's Bench about	01	01	00
	02	01	08

If

If the business have proceeded no further than a Libel and Articles, this is all the Legal Charges; but if it hath proceeded further, there may be for the Copy of the Answer—

For every Witness Examined 1 s. } 00—01—06
and for the first ———— }

For a Fee to the Proctor at Inform. — 00—03—00

For a Definitive Sentence ———— 00—11—00

For the Advocate at the Sentence ——— 00—10—00

But note, the Charges are *more or less*, as the Cause went further or lesser way before the *Excommunication*.

But if the Bishop will not take the *Caution*, and discharge you, you may have a second *Writ* directed to the *High-Sheriff*, commanding him to go to the Bishop, and require him to take the *Caution*, and to deliver the Prisoner, and requiring him to do it himself, if the Bishop still refuse. And if the Sheriff do not do so, you may have a *Writ* to the same purpose directed to the *Coroner* to do it, as you may see in that Authentick Law-Book, *The Register of Original Writs*, fol. 66, and 67. So careful were our Forefathers for the Liberty of the Subjects Persons. And hereby it appears that the Bishop is bound by Law to take such *Caution*, that is, *Fidejussory Caution*, I mean by *Bond and Sureties*, and thereupon to absolve the person *Excommunicated*, though he will not take an *Oath, stare mandatis Ecclesie, To obey the commands of holy Church*. As for what shall be accounted such *Sufficient Caution*, the practice is for the Party and two Friends (for there must be *Two Sureties*) to be bound in a *Bond* of 10 l. (seldom more, or at most 20 l.) to the Bishop, conditioned, that the Party shall obey the *Commands* of the Church, but such *Bond* when entred into is but a *Formality*; for they

are never put in Suit, and indeed signifie nothing.

Thus have we given our honest Countrey-men some few Directions how to act in this difficult and troublesome Affair, being a Myſtery unknown to many common practiſers of the Law.

Note alſo, That by the Statute of *Car. 1. Ca. 11.* For taking away the high Commiſſion Court, there is the following Clause.

And be it alſo Enacted by the Authority aforeſaid that no Archbiſhop, Biſhop, nor Vicar general nor any Chancellor Official nor Commiſſary of any Archbiſhop Biſhop, or Vicar general, nor any Ordinary whatſoever nor any other Spiritual or Eccleſiaſtical Judge, Officer or Miniſter of Juſtice, &c. ſhall *Ex officio*, or at the Inſtance, or promotion of any other perſon whatſoever urge, enforce, tender, give, or miniſter unto any Church Warden Sideman, or other perſon whatſoever any Corporal Oath, whereby, he or ſhe ſhall or may be charged or obliged to make any preſentment of any Crime or offence, or to confeſs or to accuſe himſelf or herſelf of any Crime, offence, delinquency, or miſdemeanor, or any Neglect, matter or thing, whereby or by reaſon whereof he or ſhe ſhall or may be liable, or expoſed to any cenſure, pain, penalty, or puniſhment whatſoever, upon pain and penalty that every perſon who ſhall offend contrary to this Statute ſhall forfeit and pay Treble damages to every perſon thereby greived and the ſum of 100 £. to him or them who ſhall firſt demand and ſue for the ſame.

And tho by the Statute 13 *Car. 2. Ca. 12.* part of this Statute is abrogated, yet this Clause is Excepted, and confirmed by an expreſs Proviſo of the ſaid laſt Act. And there are many precedents ſince His Majesties Reſtauration, where Church Wardens being proſecuted in the Spir. Court for not Swearing to the *Biſhops Book of Articles of Inquiry*, have moved the *Kings-Bench* or common Pleas, and obtained a prohibition

prohibition to stop such proceedings, as particularly in the Case of one *Waters of Chichester* in the *Common Pleas*,

AND now coming to speak of the Laws upon which *Protestant Dissenters* are commonly prosecuted or threatened to be prosecuted, I must for the Reader's better understanding, distinguish them; for the truth is, They are of *two* different Natures and kinds.

1. Some *Statutes* which were wholly designed against *Papists*, and ought only to be Exerted against them, which yet some now would wrest and distort, and make them Serve as *Rods* wherewith to lash dissenting Protestants for not coming to Church, Receiving the Sacrament, &c.

2. The Laws that were indeed made against *Puritan Sectaries* (as they call them) or dissenting Protestants.

I shall first briefly sum up all the first Sort, how many and what they are, and show you the Reasons why they ought not to be turned upon such dissenters: The Statutes I mean are in number *Five*, viz. The 1. *Elizabeth* Ca. 2. The 23. *Elizabeth* Ca. 1. The 29. *Elizabeth* Ca. 6. The 1. *Jac.* Ca. 4. and 3 *Jac.* Ca. 4. which we shall handle in order.

1. The Act of the 1. *Elix.* Cap. 2. Was made Immediately after that Queens coming to the Crown, when she found nothing but *Papists* and *Protestants* in General, For the word *Puritan* in those days was not known, (much less our modern Terms of Reproach, *Whig*, *Sectary*, or *Fanatick*) and she being a good Protestant (having been Educated therein) and resolved to support that Religion, casting about with her wise Council how to do it, That the Indifferent and moderate sort of *Papists* might not be too much disgusted or alienated from the Protestant Religion, but be rather invited to close therewith, It was therefore on mature deliberation Concluded to

go on gently as to the Reformation, and not to throw off all the *Ceremonies* at once: And therefore having a pattern of Protestant discipline made in King *Edward* the 6. time she follows the same steps as near as could be in the beginning, and builds on the same Foundation which her pious Brother and his wise and *honest Council* had laid. Therefore the first Act she passed, was to take off the Jurisdiction of the See of *Rome* (which had been Re-introduc'd by her Sister *Mary* of *unhappy Memory*) and to take off all Coercive power whatsoever from Ecclesiastical Persons, and all was annext to the Imperial Crown of *England*. This Act was Intituled, *An Act to Restore to the Crown the antient Jurisdiction, &c.* 1. *Eliz. Ca. 1.* And hereby all the Laws made in the time of Queen *Mary* for settling the Popes Authority in *England* were Repealed. And also [*Section the 18th*] power is given to the Queen to grant *Commissions* under the Broad Seal of *England* to such [*Bishops or Laymen, no matter which*] as she should appoint to hold *Ecclesiastical Courts*, and none might do it *without*, upon pain of a *Præmunire*, and also the Oath of *Supremacy* is formed and hereby Injoined.

The very next Act is That which we have now under Consideration Intituled *An Act of Uniformity, and Common Prayer, and Service in the Church, and Administration of the Sacrament*, Which amongst other things Inflicts the penalty of 12d. for not coming to Church every Sunday and Holy-day.

Now that this Act was intended against Papists may be concluded as well because, the whole Act runs for the beating down of the *Fopperies* and *superstitions* of the Church of *Rome*, and how could it aim at any sort of Protestants, since at that time of day there were none but Papists and Churchmen in *England*.

This *Twelvepence* is not forfeited till Conviction, which must be by a *Jury*; to which purpose, the *Ju-
stices*

stices of Oyer and Terminer, and of Assize, and Mayors and Head-Officers of Corporations are Authorized To inquire, hear and determine the same, — But the party must be Indicted the next Sessions or Assizes after the Offence or not at all. So that they can upon this Act Prosecute at once for no more defaults than there are Sundaies & Holy-days between one Sessions or Assizes and another, And when the party is so Convicted the said Courts are to make out process for Levying the Twelve pences, which shall be Levied by the Church-Wardens for the use of the poor. P

However there being 52 *Sundaies* and 29 *Holy-daies* (appointed by our Liturgy to be observed) in the year, the Constant charge by this statute for not coming to Church would be but 4l. 15. p. An. [And yet by the way, Note, That We have more *Holy-daies* or *Feasts* to be observed since his Majesties Restauration than ever the Church of *England* owned before, For there were antiently but 27. But upon the Review of the Book of Common prayer, my Lords the Bishops were pleased to add 2 New ones *viz.* The Conversion of *St. Paul* and *St. Barnabas*, and whereas, in our old Common-prayer-Books, 'tis said *The Feast of St. Michael the Arch-Angel*, in our present Books, 'tis *St. Michael and all Angels*, Which seems an Affront to *S. Michael* at once to leave out his Title of *Arch-Angel*, and at the same time bring in all other Angels (as well of the lower as Higher Hierarchies) to share with him in a Festival, the Honour of which he had enjoyed so long, solely and Intire to himself — but this by the by] So that upon the whole matter, If any body should be busy to Execute this Act upon the Protestant dissenters from the Established Church of *England*, yet considering the trouble of such a Conviction, and the difficulty of proving a Negative *viz.* that a man was not at Church, for note the words are, — *shall repair to his own Parish Church*, or P

* to some usual place where Common Prayer shall be used, So that if he were at Mr. Read's Meeting-House, I conceive he were safe from this Act: All this I say Considered the Labour would be more than the trouble — therefore let's proceed.

2. The second Act of this kind, is 23 *Eliz. Cap. 1.* Intituled *An Act to Retain the Queens Majesties Subjects in t^{he}ir due Obedience.* "And by this, to Reconcile any or
 " for any to be Reconciled to the See of Rome, To with-
 " draw or be with-drawn from the Establishd Religi-
 " on, to the Romish Religion; Is made High-Trea-
 " son; And that every one saying *Mass* shall forfeit
 " 200 Marks and every one that hears it 100 Marks,
 " And every one above 16. years old not repairing to
 * some Church or Chappel, but forbearing the same
 " contrary to the said Stat. 1. *Eliz. C. 2.* shall being
 & " lawfully Convicted forfeit 20 l. for every month,
 " And the Justices at the Quarter Sessions are Im-
 " powered to Inquire into the Offences against this
 " Act, Except Treason, And if any Indicted here-
 " upon (Except for Treason) will submit in open
 " Court and conform before Judgment given, he shall
 " be discharged.

Now that this Statute was expressly and wholly made against the Papists is evident by the whole Scope thereof, as punishing saying of *Mass*, & drawing the Queens Subjects to Popery, &c. More especially by its preamble (which alwaies opens and declares the Scope of a Law) whereas since the Statutes made in the 13. year of the Reign of the Queen our Sovereign Lady, Intituled, *An Act against the bringing in, and putting in Execution of Bulls, Writings & Instruments, and other Superstitious things from the See of Rome*, divers ill affected Persons have practised by other means than by Bulls or Instruments, Writtten or Printed to with- draw Her Majesties Subjects to obey the said usurped Authority of Rome, and IN RESPECT OF THE SAME [pray mark] to perswade great numbers

numbers to with-draw their due Obedience from Her Majesties Laws establishd for the due service of Almighty God ——— For Reformation *W H E R E O F*, be it Enacted, *viz.* That to with-draw to the Church of *Rome* shall be *Treason*; and not coming to Church shall forfeit 20 *l. p. month* ——— Nothing can be more plain than that this Levelled *wholly against the Papists*, and cannot at all affect dissenting Protestants. *

3. The Statute of 29. *Eliz. Cap. 6.* Is only a Reinforcement of the last Act, and therefore must be only intended of the same Persons, *viz. Popish Recusants* [For as yet there were no other] whose Penalties this Statute Encreases for not coming to Church: For whereas by the former Statute of 23^d it was to be only 20 *l. p. month* and bound to the *good Behaviour* after Conviction; This gives to the Queen & Her Heirs, a Right to 20 *l. p. month* for every month after such Conviction till they come to Church: And if default be made of payment of the 20 *l. a month*, then to seize all their Goods, and 2 parts of their Real Estate ——— But this is still concerning *Popish Recusants*, for it respects the same that were Offenders against the Statute of the 23. And they were *only Papists*: Therefore 'tis absurd and unjust to turn the Edge on't upon Protestants. P

4. We come now to the Statute of 1. *Jac. Ca. 4.* which confirms all the former Statutes made against Popish Recusants in the Queens time, But provides for their being discharged, tho Convicted, upon their coming to Church.

And that it means and intends none but Jesuits and Popish Priests and other Popish Recusants appears manifestly, not only in the Title but in the first Section of the Act it self, and so throughout: The Title, is, *An Act for the due Execution of the Statutes against Jesuites, Seminary Priests, Recusants*, [the 2 former words, including the Romish Clergy, the latter the

Lajery] &c. and begins thus — *For the better and mo^{re} due Execution of the Statutes heretofore made [Against whom?] as well against Jesuites, Seminary Priests, and other SUCH-LIKE Priests [That is, other Popish Priests tho not bred up in the Seminaries] as also against all manner of Recusants [That is Papists tho not in Orders] Be it Enacted, &c. That all & every the Statutes heretofore made against Jesuites, Seminary Priests and other Priests, Deacons, and Religions and Ecclesiastical Persons whatsoever made, ordained or professed, or to be made by any Authority or Jurisdiction derived, Challenged, or pretended from the See of Rome, together with all those made against any manner of Recusants [That is Papists still, but Lay men not in Orders nor professed of any Order of Monks or Friars as those before mentioned were.] shall be put in due and Exact Execution. — — — — —*

Nothing can be more absurd than to rack & force this Law so far besides its Scope, as to make use of it against Protestants agreeing with the Church of England in all the Doctrines and only differing in a few Indifferent Ceremonies; When it most manifestly appears intended only against Jesuits, Romish Priests, and other Papists.

5. And now was discovered the Hellish Powder-Plot of the Papists which occasioned the making of the Statute 3 Jac. Ca. 4. Intituled, *An Act for discovering and Repressing Popish Recusants*. So that both the occasion and the very Title, shews evidently against whom this Act is designed, which also appears further in the preamble; the whole purport of this Act all along being only to Reinforce the rest of the Acts against *Popish Recusants*, and for that as thereby appears, some of them did come to Church and heard divine Service, to save the Penalties in the former Acts, and yet continued *Papists still in their hearts*, Therefore by this Act they were all to take the Sacrament once a year, And if they refused they should forfeit 20*l.* the 1st year, for the 2d year 40*l.* & for every year afterwards 60*l.* untill he or she have received the said Sacrament. And

And by the 4th Section, the Church Wardens and Constables are to present the monthly absence of all P O P I S H Recusants, ——— but they are not bound by this Act to present any but Papists. For from this Act we may observe, that none can be Prosecuted upon this Act or any of the other which it refers to (which are all those here before rehearsed) unless they be P O P I S H Recusants, for so are the express words of the Act. And without doubt should any *busy* Officer whatsoever Present or prosecute any person thereupon other than a Popish Recusant, the person so presented may *Joyn Issue*, that he is no such person as these Acts intend, being not a Papist.

So that upon the whole matter, we may conclude, It is an abuse, and utterly Illegal, to Prosecute Protestants on such Laws as were made solely and wholly against Papists, as will further appear in our next Observation; and we have heard some Judges have declared so much.

However I shall here add the *Judgment* of the *House of Commons* in the Case, for tho I know and own a *vote* of either or both Houses cannot Repeal a Law, nor alter its sense, yet certainly the House consisting of so many wise discreet persons, & a great number of them Excellently Learned in the Laws, they are as like to Interpret a doubtful Law, and hit upon the true Interpretation how far and to what it does extend, as two or three little swaggering *Justices*, or any single Judge: At least were I an Officer, I should rather incline to credit their opinion, & not run an hazard by employing the *Toils* made for restraining the *Wolves* and the *Foxes*, to intangle & destroy the Innocent *sheep*, meerly because they do not all exactly tread in the *very same* steps and bite punctually all of one Sort of Grass.

Sabbati Sexto die Nov. 1680.

Resolved Nemine contradicente, That it is the opinion of this House,

House, That the Acts of Parliament made in the Reigns of Queen Elizabeth and King James against Popish Recusants, ought not to be extended against Protestant dissenters.

And now having discharged these unlawful weapons, let's see what *Legal Arms* there are or have been really formed against the Sectaries. And the first was the very sword of Goliath, there was none like it.

1. I mean the Act of 35 Eliz. Ca. 1. (which some would make us believe has had as many *Lives* as a Cat) intituled *An Act to Retain the Queen's Majesties Subjects in their due Obedience.* This was the first Law that was made since the Reformation, against those we commonly called Sectaries, Conventiclers, or Protestant Dissenters; and this Act indeed, beyond all dispute, was made against them, and them only; for the Popish Recusants are expressly Excepted out of it, as appears by the Act: And that the Reader may better judge of the true difference between *this Act*, and *those* others before recited, made against Popish Recusants, by the style and expressions. I shall here insert the first Paragraph, and give you the substance of the rest of it.

‘For the preventing and avoiding of such great Inconveniencies and Perils as might happen and grow by the wicked and dangerous practices of seditious Sectaries, and disloyal Persons; Be it Enacted by the Queen's most Excellent Majesty, and by the Lords Spiritual and Temporal, and the Commons in this present Parliament Assembled; and by the Authority of the same, That if any person or persons, above the Age of sixteen years, which shall obstinately Refuse to Repair to some Church, Chapel, or usual place of Common-Prayer, to hear Divine Service, Established by Her Majesties Laws and Statutes in that behalf made, and shall forbear to do the same by the space of one month next after, without any lawful cause, shall at any time after
‘forry

‘ forty daies next, after the End of this Session o
 ‘ Parliament, by Printing, Writing, or Express Words
 ‘ or Speeches, advisedly, or purposely practise, or go a-
 ‘ bout to make or persuade any of Her Majesties Sub-
 ‘ jects, or any other within her Highness’s Realms or
 ‘ Dominions, to deny, withstand, and impugn Her Ma-
 ‘ jesties Power and Authority, in cases Ecclesiastical,
 ‘ United and Annexed to the Imperial Crown of
 ‘ this Realm; or to that end or purpose shall advisedly
 ‘ or maliciously move, or persuade any other person
 ‘ whatsoever, to forbear, or abstain from coming to
 ‘ Church, to hear Divine Service, or to Receive the
 ‘ Communion, according to Her Majesties Laws and
 ‘ Statutes aforesaid, or to come to, or be present at
 ‘ any unlawful Assemblies, Conventicles or Meetings,
 ‘ under colour or pretence of any Exercise of Re-
 ‘ ligion, contrary to Her Majesties Laws and Sta-
 ‘ tutes; or if any person or persons which shall ob-
 ‘ stinately Refuse to Repair to some Church, by the
 ‘ space of one month, to hear Divine Service, as is
 ‘ aforesaid, shall after the said forty daies, either of
 ‘ him or themselves, or by the Motion, Persuasion,
 ‘ Inticement or Allurement of any other, willingly
 ‘ Joyn in, or be present at any such Assemblies, Con-
 ‘ venticles, or Meeting under colour or pretence of
 ‘ any such Exercise of Religion, contrary to the
 ‘ Laws and Statutes of this Realm as is aforesaid; That
 ‘ then every such person so offending, as aforesaid,
 ‘ and being thereof lawfully convicted, shall be Com-
 ‘ mitted to Prison, and there to Remain, *without Bail* or
 ‘ Mainprise, *until they shall Conform*, and yield them-
 ‘ selves to come to some Church, Chapel, or usual place
 ‘ of Common-Prayer, and hear Divine Service, &c.

Then the Act goes on, and provides, That if the
 person do not Conform within three months after
 Conviction, he should Abjure, that is, be Eanishr,
 and swear never to come back without leave; And
 if he will not swear so, then the same to be Felony,
 without Benefit of Clergy.

From which Act these 3 things are observable.

1. That the same was wholly intended against the *Puritanes* or *Sectaries*, for the *Papists* are expressly exempted by a particular clause, Sect. 12. in these words, 'Provided that *No Popish Recusant, or Feme Covert* shall be compelled or bound to *abjure by vertue of this Act*.

2. That *Q. Eliz.* and her wise Parliament did not intend or take such *Protestant Recusants* to be within the meaning of, or punishable by the other before mentioned Statutes against *popish Recusants*: For if they had so understood, they might have punished them sufficiently on those old Laws without giving themselves the trouble of making this new Law against them *Frustra fit per plura quod fieri potest per pauciora. God and the Law do nothing in vain.*

3. If it be objected, That all those Laws as well as this ought to be construed to one and the same end & scope, and that all the before mentioned Acts of *Qu. Elizabeth*, and *K. James* are equally to be applied to all *Dissenters* from the *Established Church of England*: I answer that cannot be; for since in this Act no *Papists* are concerned, being particularly exempted as aforesaid: Then it necessary follows, if the *Popish Recusants* shall not be punished by this Act made against *Sectaries* and *seditionous Conventiclers*, that then the *Sectaries* and *Conventiclers*, *Protestant Dissenters*, that is, *Protestant Recusants* (for that 'tis they aim at, to colour the laying the other Acts upon them) shall not be prosecuted upon those Laws made only against *Popish Recusants*; for if they should, then you leave the *Protestant Recusants* in a far worse condition than the *Papists*, the one being provided and not the other.

But still note, that all that I have said about this Act of the 35. of *Eliz.* comparing it with the others made against *Popish Recusants*, is only to shew the nature of the one and the other: For the truth is, this Act of the 35th of *Eliz.* is not now in force, — As appears thus:

I. The

1. The very words thereof shew it to have been originally but a temporary Act, for the last words of it are these, — *This Act to continue no longer than to the end of the next Session of Parliament.*

2. By several Acts it was continued till the 1st year of K. James, and then it was enacted, that the same should be continued, and remain in Force untill the end of the first Session of the next Parliament.

3. The second and next Session of Parliament began and holden by Prorogation the 5th of Nov. in the 3d year of K. James, and ended the 27th of May next, and was then prorogued to the 18th, of Nov. 1606. In which Session there was no continuance of this Statute of the 35th of Eliz. so that there it expired, absolutely ceased, and was of no more force than if it had never been, and so continued for many years buried in Oblivion.

4. In a Parliament held the 21. of K. James, ca. 28. It is (amongst other things) enacted, *That this Statute of the 35. of El z. shall be adjudged ever since the Session in the Seventh Year of His Majesties Reign of England, to have been of such force and effect, as the same were the last day of that Session, and from thenceforth to the end of the first Session of the next Parliament.* — But the truth is, that the said Statute of the 35th of Eliz. was in no force, nor of any effect at the last day of the Session in the 7th year of K. James, being expired and gone long before, viz. in the 3. year of that King as aforesaid. And being so down then this Stat. of the 21. Jacobi can no way set it up again; for this only sets up what was in force in that Session of the 7th of K. James, and no otherwise.

5. So likewise in the 3. Caroli primi, cap. 4. this Act (amongst others) is mentioned; but how? — *That it shall continue to the end of the first Session of the next Parliament, in such force and effect as it was the first year of Charles the first,* — when indeed it was then in no force at all.

6. In the 16th *Caroli secundi*, cap. 4. an Act was made, Intituled, *An Act to prevent and suppress seditious Conventicles*. Which begins thus: 'Whereas an Act made in the 35th year of the Reign of our late Sovereign Lady Queen *Eliz.* Intituled, *An Act to retain the Queens Majesties Subjects in their due Obedience*, hath not been put in Execution, by reason of some doubt of late made, whether the said Act be still in force, although it be very clear and evident: And it is hereby declared, that the said Act is still in force, and ought to be put in Execution: For providing therefore of further and more speedy Remedies, &c. Be it enacted, &c. And the last clause of this Statute of the 16 *Car. 2di.* runs thus: 'Provided that this Act continue in force for 3 years after the end of this present Session of Parliament, and from thence to the end of the next Session of Parliament, after the said 3 years, and no longer.

Now how far these words — *It is hereby declared that it is in force, and ought to be put in execution*; without saying, *it is hereby enacted, that it shall be in force*, might operate to give some Life and strength to the aforesaid expired Statute of the 35th of *Eliz.* I shall not determine: But suppose it were thereby set on foot again, this last Statute is but one intire Statute, and that part which declares or inables the Statute of the 35th of *Eliz.* to be in force, is joined and annexed to the rest, and is altogether but one Law, and hath its period at the time before prefixed, and then that declarative part must die with the rest.

Now that Session wherein this Statute of 16 *Car. 2.* was made, ended the 16th and 17th of *Car. 2.* Then the three Years, for which it was to continue commenc'd, and ended the 20th *Car. 2di.* but after the three years it was to continue till the next Session of Parliament, which next Session, after the three years, began 10. *October*, 1667. and by Adjournments was continued to the 24th of *October*, 1670, being the 22d.

of.

of *Car. 2d.* and then was the end of that, and with it this Conventicle Act expired, so that now there is no pretence of the 35th of *Elizabeth's* being in force; for the declarative part in this Conventicle Act cannot enforce or give Life to any thing longer than it *lives itself*: For if the *Declaring* part of this Act, after it self is extinguisht, can be read, urg'd or construed as a Law to enforce and enliven another Statute, which hath no being of a Law in it self, then it would necessarily follow, that an expired Law is as Authentick as a Law in being, which is absurd.

From what hath been said, it appears, That as *Protestant Dissenters* ought not to be prosecuted on the Laws made against *Popish Recusants*; so likewise 'tis very evident, That both the Statute of the 35th of *Eliz.* and also that of the 16th of *Car. secundi*, are Expired, and of no force. And indeed 'tis happy for the Nation that they are so; for had these two Acts been still in force, being of a cruel sanguinary nature, much mischief might have accrewed to the people of this Kingdom.

So that there are now *no Laws* in being to punish the Conventiclors, and the Nonconformist Ministers, who did not Conform to the Act of Uniformity made in this King's Reign; but the Act commonly called the *5 Mile or Oxford Act*: And the Conventicle Act made the 22th of this King.

These we shall severally consider.

Anno 17. *Caroli Secundi, Ca. 2.*

An Act for Restraining Nonconformists from Inhabiting in Corporations.

Whereas divers Parsons, Vicars, Curates, Lecturers, and other persons in holy Orders have not declared their unfeigned Assent and Consent to the use of all things contained and prescribed in the Book of Com-

Common-Prayer. and Administration of the Sacraments, and other Rites & Ceremonies of the Church, according to the use of the Church of *England*, or have not subscribed the Declaration or Acknowledgment contained in a certain Act of Parliament made in the 14 Year of His Majesties Reign, and Intituled, *An Act for the Uniformity of publick Prayers, and Administration of Sacraments, and other Rites and Ceremonies, and for the establishing the Form of making, ordaining, and consecrating of Bishops, Priests and Deacons in the Church of England*, according to the said Act, or any other subsequent Act, And whereas they or some of them, and diverse other person and persons not ordained according to the Form of the Church of *England*, and as have since the Act of Oblivion taken upon them to preach in unlawful Assemblies, Conventicles, or Meetings, under colour or pretence of Exercise of Religion, contrary to the Laws and Statutes of this Kingdom, have settled themselves in divers Corporations in *England*, sometimes three or more of them in a place, thereby taking an opportunity to distil the poisonous Principles of Schism and Rebellion into the hearts of His Majesties Subjects, to the great danger of the Church and Kingdom.

II. Be it therefore enacted by the Kings most excellent Majesty, by and with the Advice and consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled; and by the Authority of the same, That the said Parsons, Vicars, Curates, Lecturers, and other persons in Holy Orders, or pretended Holy Orders, or pretending to Holy Orders, and all Stipendiaries, or other persons who have been possessed of any Ecclesiastical or Spiritual Promotion, and every of them, who have not declared their unfeigned Assent and Consent as aforesaid, and subscribed the Declaration aforesaid, and shall not take and subscribe the Oath following.

I A. B. do swear, That it is not lawful upon any pretence whatsoever, to take Arms against the King; and that I do abhor that Traiterous position of taking Arms by his Authority against his Person, or against those that are commissioned by him, in pursuance of such Commissions; and that I will not at any time endeavour any Alteration of Government either in Church or State.

III. 'And all such person, and persons as shall
'take upon them to preach in any unlawful Assembly,
'Conventicle or Meeting, under colour or pretence
'of any exercise of Religion, contrary to the Laws
'and Statutes of this Kingdom, (2.) shall not at any
'time from and after the 24th day of *March*,
'which shall be in this present year of our Lord God
'One thousand six hundred sixty and five; unless only
'in passing upon the Road, come or be within five
'Miles of any City, or Town Corporate, or Burrough,
'that sends Burgeesses to the Parliament, within His
'Majesties Kingdom of *England*, Principality of *Wales*,
'or of the Town of *Berwick* upon *Tweed*, (3) or
'within five Miles of any parish Town or place,
'wherein he or they have since the Act of Oblivion
'been Parson, Vicar, Curate, Stipendiary, or Lectu-
'rer, or taken upon them to preach in any unlawful
'Assembly, Conventicle or Meeting, under colour
'or pretence of any exercise of Religion, contrary to
'the Laws and Statutes of this Kingdom, (4) Be-
'fore he or they have taken and subscribed the Oath
'aforesaid, before the Justices of the Peace at their
'Quarter-Sessions, to be holden for County, Riding,
'or Division next unto the said Corporation, City,
'or Burrough, Parish, place or Town, in open Court;
'(which said Oath the said Justices are hereby im-
'powered there to administer,) (5) Upon forfeit-
'ure for every such Offence the sum of Forty pounds
'of lawful English Money; the one third part there-
'of to His Majesty and His Successors, the other third
'part

part to the use of the poor of the Parish where the Offence shall be committed, and the other third part thereof to such person or persons as shall or will sue for the same by Action of Debt, Plaint, Bill, or Information in any Court of Record at *Westminster*, or before any Justices of Assize, *Oyer* and *Terminer*, or Gaol-delivery, or before any Justices of the Countie Palatine of *Chester*, *Lancaster*, or *Durham*, or the Justices of the great Sessions in *Wales*, or before any Justices of Peace in their Quarter Sessions, wherein no *Essoin*, Protection, or wager of Law shall be allowed.

IV. Provided always, and be it further enacted by the Authority aforesaid, That it shall not be lawful for any person or persons restrained from coming to any City, Town Corporate, Burrough, Parish, Town, or place, as aforesaid, or for any other Person or Persons as shall not first take and subscribe the aforesaid Oath, and as shall not frequent Divine Service established by the Laws of this Kingdom, and carry him or her self reverently, decently, and orderly there, to teach any publick or private School, or take any Boarders or Tablers, that are taught or instructed by him or her self, or any other, upon pain for every such Offence to forfeit the sum of Forty pounds, to be recovered and distributed as aforesaid.

V. Provided also, and be it further enacted by the Authority aforesaid, that it shall be lawful for any two Justices of the Peace of the respective County, upon Oath to them of any Offence against this Act, which Oath they are hereby empowered to administer, to commit the Offender for six Months without Bail or Mainprise, unless upon or before such Commitment, he shall before the said Justices of the Peace, swear and subscribe the aforesaid Oath and Declaration.

VI. Provided always, that if any person intended

to

to be restrained by vertue of this Act, shall without fraud or Covin be served with any Writ, *Sub-pœna*, Warrant, or other Process, whereby his personal appearance is required; his Obedience to such Writ, *Sub-pœna*, or Process shall not be construed an Offence against this Act.

Note, That as to the Penalty of Forty Pound, the party must be tried at the Assises or Sessions before it is forfeited. But any two Justices of Peace may commit for six Months, unless before them he'll swear and subscribe the Oath in this Declaration specified, the Assent and Consent, and the Declaration therein referr'd unto, which if he do he puts himself out of their power.

Now the Assent and Consent he has spoke of is appointed by the Stat. 13, and 14. of *Car. 2di*, chap. 4. as follows.

'I *A.B.* do here declare my unfeigned Assent & Consent to all & every thing contained & prescribed, in & by the Book intituled, the Book of common Prayer, & Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of *England*, together with the Psalter or Psalms of *David*, pointed as they are to be sung or said in Churches; and the form and manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons.

The Declaration is by the Act last mentioned, as follows.

I *A.B.* do declare, that it is not lawful, upon any pretence whatsoever, to take Arms against the King; and that I do abhor that Traiterous position of taking Arms by his Authority against his Person, or against those that are commissioned by him; and that I will conform to the Liturgy of the Church of *England*, as it is now by Law established: And I do declare, That I do hold there lies no Obligation upon me, nor any other person, from the Oath commonly

monly called the solemn League and Covenant to endeavour any change or alteration of Government, either in Church or State; and that the same was in itself an unlawful Oath, and imposed upon the Subjects of this Realm against the known Laws and Liberties of this Kingdom.

But note, that this last branch of this Declaration, by a subsequent clause of the same Act, was to continue but till the 25th day of *March*, 1682. so that now the same is not to be required. — And thus much for this Five-Mile Act.

We now proceed to the other Statute against Protestant Dissenters, viz.

Anno Viceffimo Secundo Caroli Secundi Regis, Cap. 1.

An. Act to prevent and suppress Seditious Conventicles.

For providing further and more speedy Remedies against the growing and dangerous practices of Seditious Sectaries, and other disloyal persons, who under pretence of Tender Consciences, have or may at their Meetings contrive Insurrections (as late Experience hath shewn;) (2.) Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament Assembled, and by Authority of the same, That if any person of the Age of sixteen years, or upwards, being a Subject of this Realm, at any time after the tenth day of *May* next, shall be present at any Assembly, Conventicle or Meeting, under colour or pretence of any Exercise of Religion, in other manner than according to the Liturgy and practice of the Church of *England*, in any place within the Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, at which Conventicle, Meeting or Assembly, there shall be five persons or more Assembled together over and besides those of the same household; if it be in a house where there is a Family inhabiting;

ing; or if it be in a house, field, or place where there is no Family inhabiting; then where any five persons or more, are so Assembled as aforesaid, it shall and may be lawful to and for any one or more Justices of the Peace of the County, Limit, Division, Corporation or Liberty wherein the Offence aforesaid shall be Committed; or for the chief Magistrate of the place where the Offence aforesaid shall be committed: and he and they are hereby Required and Enjoyed *upon Proof* to him or them Respectively made of such Offence, either by Confession of the Party, or Oath of two Witnesses, (3.) Which Oath the said Justice and Justices of the Peace, and Chief Magistrate respectively, are hereby Required and Impowered to Administer; or by Notorious Evidence and Circumstance of the fact, to make a Record of every such Offence under his or their Hands and Seals respectively; which Record so made as aforesaid, shall to all intents and purposes be in Law taken and adjudged to be a full and perfect *Conviction* of every such Offender for such offence; and thereupon the said Justice, Justices and Chief Magistrate respectively shall Impose on every such Offender so convicted as aforesaid, a Fine of five shillings for such first Offence; which Record and Conviction shall be certified by the said Justice, Justices or Chief Magistrate, at the next Quarter-Sessions of the Peace, for the County or place where the Offence was committed.

2. And be it further Enacted by the Authority aforesaid, That if such Offender so convicted as aforesaid, shall at any time again commit the like Offence or Offences, contrary to this Act, and be thereof in manner aforesaid convicted, then such Offender so convicted of such like Offence or Offences, shall for every such Offence incur the penalty of ten shillings; (2.) Which Fine and Fines for the first and every other Offence, shall be Levied by Distress and Sale of the

the Offenders Goods and Chattels; or in case of the poverty of such Offender, upon the Goods and Chattels of any other person or persons who shall be then convicted in manner aforesaid of the like Offence at the same Conventicle, at the discretion of the said Justice, Justices, or Chief Magistrate respectively, so as the Sum to be Levied on any one person in case of the poverty of other Offenders, amount not in the whole to above the Sum of ten pounds, upon occasion of any one Meeting as aforesaid: (3.) And every Constable, Headborough, Tythingman, Church-Wardens, and Overseers of the Poor respectively, are hereby Authorized and Required to Levy the same accordingly, having first received a Warrant under the Hands and Seals of the said Justice, Justices, or Chief Magistrate respectively so to do; (4.) The said Monies so to be Levied, to be forthwith delivered to the same Justice, Justices, or Chief Magistrate, and by him or them to be distributed; the one third part thereof to the use of the King's Majesty, His Heirs and Successors, to be paid to the High Sheriff of the County for the time being in manner following; that is to say, the Justice or Justices of Peace shall pay the same into the Court of the respective Quarter-Sessions, which said Court shall deliver the same to the Sheriff, and make a Memorial on Record of the payment and delivery thereof, which said Memorial shall be a sufficient and final discharge to the said Justice and Justices, and a charge to the Sheriff, which said discharge and charge shall be certified into the Exchequer together, and not one without the other: And no Justice shall or may be questioned, or accountable for the same in the Exchequer or elsewhere, than in Quarter-Sessions; another third part thereof to and for the use of the Poor of the Parish, where such Offence shall be committed; and the other third part thereof to the Informer and Informers, and to such person

Person and persons as the said Justice, Justices, or chief Magistrate respectively, shall appoint, having regard to their diligence and Industry in the discovery, dispersing and punishing of the said Conventicles.

3. And be it further enacted by the Authority aforesaid, That every person who shall take upon him to preach or teach in any such Meeting, Assembly, or Conventicle, and shall thereof be convicted as aforesaid, shall forfeit for every such first Offence the sum of Twenty pound, to be Levied in manner aforesaid, upon his Goods and Chattles; (2.) And if the said Preacher or Teacher so convicted be a stranger, and his Name and Habitation not known, and is fled and cannot be found, or in the Judgment of the Justice, Justices, or chief Magistrate, before whom he shall be convicted, shall be thought unable to pay the same, the said Justice, Justices, or chief Magistrate respectively, are hereby impowered and required to levy the same by Warrant as aforesaid upon the Goods & Chattels of any such persons who shall be present at the same Conventicle, any thing in this or any other Act, Law, or Statute to the contrary notwithstanding; and the Money so levied to be disposed of in manner aforesaid. (3.) And if such Offender so convicted as aforesaid, shall at any time again commit the like Offence or Offences contrary to this Act, and be thereof convicted in manner aforesaid, then such Offendor so convicted of such like Offence or Offences, shall for every such Offence incur the penalty of Forty pounds, to be levied and disposed as aforesaid.

4. And be it further enacted by the Authority aforesaid, That every person that shall wittingly and willingly suffer any such Conventicle Meeting, or unlawful Assembly aforesaid, to be held in his or her House, Out-house, Barn, Yard, or Backside, and be convicted thereof in manner aforesaid, shall forfeit the sum of

20 l. to be levied in manner aforesaid, upon his or her Goods and Chattels; or in case of his or her poverty or inability as aforesaid, upon the Goods and Chattels of such persons who shall be convicted in manner aforesaid, of being present at the same Conventicle; and the Money so levied to be disposed of in manner aforesaid.

5. Provided always, and be it enacted by the Authority aforesaid, That no person shall by any clause of this Act be liable to pay above Ten Pounds for any one Meeting, in regard of the poverty of any other person or persons.

Provided also, and be it further enacted, That in all cases of this Act where the penalty or sum charged upon any Offendor, exceeds the sum of Ten shillings, and such offendor, shall find himself aggrieved, it shall and may be lawful for him within one Week after the said penalty or Money charged shall be paid or levied, to appeal in writing from the person or persons convicting, to the judgment of the Justices of the Peace in the next Quarter-Sessions, (2.) To whom the Justice or Justices of Peace, chief Magistrate or Alderman, that first convicted such offendor, shall return the Money levied upon the Appellant, and shall certify under his and their Hands and Seals, the Evidence upon which the conviction pass, with the whole Record thereof, and the said Appeal: (3.) Whereupon such Offendor may plead and make defence, and have his *Trial by a Jury* thereupon: (4.) And in case such Appellant shall not prosecute with effect, or if that upon such Trial he shall not be acquitted, or Judgment pass not for him upon his said Appeal: the said Justices at the Sessions shall give treble costs against such Offendor for his unjust Appeal (5.) and no other Court whatsoever shall intermeddle with any cause or causes of Appeal upon this Act, but they shall be finally determined in the Quarter-Sessions only.

7. Provided alwaies, and be it further Enacted, that upon the delivery of such Appeal as aforesaid, the person or persons appellant, shall enter before the person or persons Convicting into a Recognizance, to Prosecute the said Appeal with Effect. (2.) Which said Recognizance the Person or Persons Convicting is hereby Impowered to take, and Required to Certifie the same to the next quarter Sessions. (3.) And in Case no such Recognizance be entred into, the said Appeal to be null and Void.

8. Provided alwaies that every such Appeal shall be left with the Person or Persons so Convicting as aforesaid, at the time of the making thereof.

9. And be it further Enacted by the Authority aforesaid, that the Justice, Justices of the Peace and Chief Magistrate respectively, or the respective Constables, Headboroughs and Tything-men by *Warrant* from the said Justice, Justices, or Chief Magistrate respectively, shall and may with what Aid, Force, and Assistance they shall think fit, for the better Execution of this Act, after Refusal or Denial to enter, break open and enter into any House or other place, where they shall be Informed of any such Conventicle as aforesaid, is or shall be held, as well within Liberties as without; (2.) And take into their Custody the Persons there unlawfully Assembled, to the Intent they may be proceeded against according to this Act: (3.) And that the Lieutenants or Deputy Lieutenants, or any Commissionated Officer of the *Militia*, or other of his Majesties forces, with such Troops or Companies of Horse and Foot; and also the Sheriffs and other Magistrates and Ministers of Justice, or any of them, jointly or severally within any of the Counties or Places within this Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, with such other Assistance as they shall think meet,

or can get in Readiness with the soonest, on Certificate made to them respectively under the Hand and Seal of any one Justice of the Peace or Chief Magistrate, of his particular Information or Knowledge of such unlawful Meeting or Conventicle held, or to be held in their respective Counties or Places, and that he with such Assistance as he can get together, is not able to suppress and dissolve the same, shall and may, and are hereby required and enjoined to Repair unto the place where they are so held or to be held; and by the best means they can, Dissolve, Dissipate, or prevent all such unlawful Meetings, and take into their Custody, such and so many of the said Persons so unlawfully Assembled as they shall think fit, to the Intent they may be Proceeded against according to this Act.

10. Provided alwaies that no Dwelling-house of any Peer of this Realm where he or his Wife shall then be Resident, shall be searched by vertue of this Act, but by immediate Warrant from his Majesty under his Sign Manual, or in the Presence of the Lieutenant, or one Deputy Lieutenant, or two Justices of the Peace, whereof one to be of the Quorum of the same County or Riding.

11. And be it further Enacted by the Authority aforesaid, that if any Constable, Headborough, Tythingman, Church-warden or Overseer of the Poor, who *Shall know or be credibly Informed* of any such Meetings or Conventicles held within his Precincts, Parishes or Limits, and shall not give Information thereof to some Justice of the Peace, or the chief Magistrate, and endeavour the Conviction of the Parties according to his Duty, but such Constable, Headborough, Tything-man, Church-warden, Overseers of the Poor, or any person lawfully called in Aid of the Constable, Headborough or Tything-man, shall wilfully and wittingly omit the performance of his Duty, in the Execution of

this

this Act, and *Be thereof Convicted in manner aforesaid*, he shall forfeit for every such Offence the Summe of five Pound to be Levied upon his Goods and Chattels, and disposed in manner aforesaid. (2.) And that if any Justice of the Peace, or Chief Magistrate shall wilfully and wittingly omit the Performance of his Duty in the Execution of this Act, he shall forfeit the Summe of one hundred Pounds, the one Moiety to the use of the Informer, to be Recovered by Action, Suit, Bill or Plaint, in any of his Majesties Courts at *Westminster*, wherein no Essoign, Protection or Wager of Law shall lie.

12. And be it further Enacted by the Authority aforesaid, that if any Person be at any time Sued for putting in Execution any of the Powers contained in this Act, otherwise than upon Appeal allowed by this Act, such Person shall and may Plead the General Issue, and give the special matter in Evidence; (2.) And if the Plaintiff be Nonsuit, or a Verdict pass for the Defendant, every such Defendant shall have his full Treble Costs.

13. And be it further Enacted by the Authority aforesaid, that this Act, and all clauses therein contained, shall be Construed most largely and beneficially for the suppressing of Conventicles, and for the Justification and Encouragement of all Persons to be Employed in the Execution thereof. (2.) And that no Record, Warrant or Mittimus to be made by Vertue of this Act, or any Proceedings thereupon shall be Reversed, Avoided, or any way Impeached by reason of any Default in form. (3.) And in Case any Person offending against this Act, shall be an Inhabitant in any other County or Corporation, or fly into any other County or Corporation after the Offence Committed, the Justice of Peace or Chief Magistrate before whom he shall be Convicted as aforesaid, shall certifie the same under his hand and Seal, to any Justice

Justice of Peace, or chief Magistrate of such other County or Corporation wherein the said person or persons are Inhabitants, or are Fled into. (4.) Which said Justice or chief Magistrate respectively, is hereby Authorized and required to Levy the Penalty or Penalties in this Act mentioned upon the Goods and Chattels of such person or Persons, as fully as the said other Justice of Peace might have done, in case he or they had been Inhabitants in the place where the Offence was Committed.

14. Provided also that no Person shall be Punished for any Offence against this Act, unless such Offender be Prosecuted for the same within three Months after the Offence Committed. (2.) And that no Person who shall be Punished for any Offence by Vertue of this Act, shall be Punished for the same Offence by Vertue of any other Act, or Law whatsoever.

15. Provided and be it further Enacted by the Authority aforesaid, that every Alderman of *London* for the time being, within the City of *London* and the Liberties thereof, shall have (and they and every of them are hereby Impowered and required to Execute) the same power and Authority within *London* and the Liberties thereof, for the Examining, Convicting and Punishing of all Offences within this Act committed within *London*, and the Liberties thereof, which any Justice of Peace hath by this Act in any County of *England*, and shall be subject to the same Penalties and Punishments, for not doing that which by this Act is directed to be done by any Justice of Peace in any County of *England*.

16. Provided and be it Enacted by the Authority aforesaid, that if the Person Offending and Convicted as aforesaid, be a Feme-covert, cohabiting with her Husband, the Penalties of five Shillings and

and ten Shillings, so as aforesaid Incurred, shall be Levyed by Warrant as aforesaid, upon the Goods and Chattels of the Husband of each Feme-covert.

17. Provided also that no Peer of this Realm shall be Attached or Imprisoned by Vertue or Force of this Act, any thing, matter or clause therein to the contrary notwithstanding.

18. Provided also, that neither this Act, nor any thing therein contained, shall extend to Invalidate or avoid his Majesties Supremacy in Ecclesiastical Affairs; (2.) But that his Majesty and his Heirs and Successors, from time to time, and at all times hereafter, Exercise and Enjoy all Powers and Authority in Ecclesiastical Affairs, as fully and as amply as himself or any of his Predecessors have, or might have done the same, any thing in this Act notwithstanding.

Notes upon the foregoing Act.

1. By the Title, Preamble and Scope of the Act it appears that the same is intended for suppressing *Seditious Conventicles* under *Pretence* of Religious Worship; that is, where the Conventiclers meet together under a pretence of Worship, not according to the Liturgy and Practice of the Church of England, but indeed to carry on ill designs against the State. ***

2. If any such Conventicle be, the Justices knowing it by the Oaths of *two Witnesses*, may make a Record thereof, and then the Persons so offending, shall forfeit so as in the Act you have heard.

3. It must appear upon Oath before the Justices, or Confession of the Parties, 1. That it was a *Seditious Conventicle*, met together to disturb the Peace, under pretence of Religion. 2. That the Worship there practised, was *not according to the Liturgy and Practice of the Church of England*;

so that the Informers must be present the whole time of the Meeting: for if they only hear a man Praying or Preaching, that is not contrary to the Practice of the Church of *England*, and how does it appear that they did not read the Liturgy? 3. It must be proved that there were Assembled five Persons or more, besides the Inhabitants in the House.

4. If a party be Fined above ten Shillings, if he pay down the Money, or it be levied within one Week after such Payment or Levy, he may Appeal from the Justice Convicting, to the next Quarter-Sessions, where he shall have a Trial by Jury thereupon, and undoubtably if it do not appear to the said Jury that it was a *Seditious Meeting*, they ought to find for the Appeler.

5. A General Warrant from any Justice or Justices to Constables, to inquire after, Seize, &c. all Conventicles in their Precincts, is not good; it ought to particularize the House and Place, Houses and Places where the Conventicle is, or Conventicles are held; and then the Constable ought forthwith to goe, and if he finds it so, to suppress it; but otherwise the Constable might be put to endless Vexation in hunting after Meetings to no purpose, whereas the Act enjoyns him no such trouble; and if you go once and find no Conventicle, you are not obliged to go a second time on the same Warrant, but ought to have a new one, nor is the Constable obliged to turn Informer.

6. As to *Breaking open Doors*, you see the Act directs that it may be done, first only in an House *where 'tis Inform'd* there is actually a Conventicle as aforesaid (that is upon the Oaths of two Persons.) 2. the Constables, &c. cannot do this without first there be a Demand and Denial to enter: 3. Nor then neither without a Warrant from the Justice

Justice to that purpose. If a Constable upon a light vain tale, without two persons Swearing it, that there is at such a House a Meeting, and without Warrant shall venture to break open the Doors, and there be found no Conventicle, he makes himself liable to be Indicted for *Burglary*.

7. There is no power given to break Doors for *Levy*ing the Penalties, therefore let the Constables and Officers be wary what they do in that Case.

8. Constables would do well to know and assert the Dignity of their *Office*, they are not to run up and down like Lacquies after the Capricio's of every Justice, and spend the Lords day Prophane-ly in *hunting after Meetings*; if the Justices are upon sufficient Oath Inform'd of a Meeting, and will make out a Warrant specifying where it is, you'll goe, but to ramble about with them from this place to that, you are not obliged; no more are you to seize or Imprison persons on the verbal Command of any Justice, unless in visible Breach of the Peace, but you must have a Warrant, specifying the persons Name and *Offence*, before you can lay hold of him, or else you may repent it, when sued another day for false Imprisonment.

9. Since by the Statute of the 29 of Car. 2^d. Cap. 7. It is Enacted in these words, "Provided also that no Person or Persons upon the Lords day shall serve or Execute, or cause to be served or Executed, any Writ, Process, Warrant, Order, Judgment or Decree, (except in cases of Treason, Felony, or Breach of the Peace) but that the service of every such Writ, Process, Warrant, &c. shall be void to all Intents and Purposes whatsoever; and the Person or Persons so Serving or Executing the same shall be as liable to the suit of the party grieved, and answer Damages to him for doing thereof, as if he or they had done the same without any Writ, Process,

"cess, Warrant, Order, Judgment, or Decree at
"all.

It will concern all Constables and Officers to consider with what safety they can execute any such Warrants at all on the Lords day, on peaceable Meetings, it being evident that every man they disturb by Colour of such Warrant on that day, has by this Statute a good Action against them :

And so much for Laws against Dissenters.

In the next place, according to our Promise, we shall here add an Abstract of the Laws against Popery and Papists ; and perhaps as 'tis said, where there are most Laws there are most Offences, so here we may say, though there be such abundance of Acts, of such severe and various Penalties, yet there are scarce any sort of Criminals more rarely brought to Conviction or Punishment.

TH E second Refusal of the Oath of Supremacy, punisht as High Treason, 5 Eliz. 1.

To maintain or Extol Authority of the Sea of Rome, the second time, High Treason, 5 Eliz. 1.

To obtain or put in Use any Bull from Rome, High Treason, 13 Eliz. 2.

To perswade or Reconcile, OR TO BE RECONCILED to the Roman Religion, High Treason, 23 Eliz. 1. & 3 Jac. 4.

For Jesuite or Priest made by Authority from the Pope, to come into, or remain in the Kings Dominions, High Treason. 27 Eliz. 2.

So, for remaining in a Seminary six Months after
Procla-

Proclamation, and afterward Returning, High Treason, 27 Eliz. 2.

For Concealing of a Bull or other Instrument from Rome, or reconciliation offer'd, Punisht as *Misprision of Treason, 13 Eliz. 2.*

To maintain or conceal those who perswade, or are Reconciled to the Roman Religion, *Misprision of Treason, 23 Eliz. 1.*

To Receive, Relieve, Comfort Jesuit or Priest, knowing him to be such, Punisht as *Felony, 27 Eliz. 2.*

To go and serve a Foreign Prince, having not before taken the Oath of Allegiance, and entred Bond, not to be Reconciled to the Roman Religion, *Felony, 3 Jac. 4.*

The first Refusal of the Oath of Supremacy, is Punisht as in Case of a *Premunire*, which imports a forfeiture of all Lands and Goods, Imprisonment for Life, and a Deprivation of the Benefit of Law, *5 Eliz. 1.*

To set forth or defend Power Spiritual in the Sea of Rome, *Premunire, 5 Eliz. 1.*

To Bring or Receive any *Agnus Dei*, Crosses, Pictures, or such like from Rome, *Premunire, 13 Eliz. 2. 23 Eliz. 1.*

To aid any Person who hath put in Use any Bull from the Sea of Rome, *Premunire, 13 Eliz. 2. 23 Eliz. 1.*

To send or give Relief to any continuing in Colleges or Seminaries beyond Sea, *Premunire, 27 Eliz. 2.*

Refusal of the Oath of Allegiance upon the second Tender, *Premunire, 3 Jac. 4. & 7 Jac. 6.*

For not Discovering of Priests made beyond the Seas, *Imprisonment, 27 Eliz. 2.*

Upon Indictment of Recusancy by Proclamation, *Imprisonment, 29 Eliz. 6.*

Those that are not able, or fail to pay their

Forfeitures, are to be Imprisoned until Payment, or Conformity, 23 *Eliz.* 1.

Women Covert Imprisoned for Refusal of the Oath of Allegiance, 3 *Jac.* 4.

For non-Payment of twelve pence for every Sunday, Imprisonment, 3 *Jac.* 4.

Women Covert Convicted for Recusancy, Imprisoned till her Husband pay ten Pounds a Month, or a third part of his Lands, 7 *Jac.* 6.

Standing Excommunicated for Recusancy, House may be broken up for his Apprehension, 7 *Jac.* 6.

Those who shall forbear to come to Church by the space of twelve Months, bound to good Behaviour, with Surety in the *Kings-Bench*, 23 *Eliz.* 1.

Every Recusant is Confin'd to five Miles Compass for Life, 23 *Eliz.* 2. To ten Miles distant from London, 3 *Jac.* 5.

Not to come into the House where the King or his Heir Apparent is, 3 *Jac.* 5.

For absence from Church-Service every Sunday twelve pence forfeited, 1 *Eliz.* 2.

And for every Holiday twelve pence forfeited, 3 *Jac.* 4.

For absence from Common-prayer, every Month, twenty Pounds forfeited, 23 *Eliz.* 1. 3 *Jac.* 4.

For default of payment of twenty Pounds a Month, all Goods, two parts of Land, and, Leases forfeited, 29 *Eliz.* 6. & 3 *Jac.* 4.

At the Kings Election to take or refuse twenty Pounds a Month, or to take two parts of the Recusants Estate, 3 *Jac.* 4.

All Copy-hold Lands of Recusants forfeited, 25 *Eliz.* 2.

The Forfeitures of the Ancestor charged upon his Heir being a Recusant, 1 *Jac.* 4.

A Recusant forfeits for not Receiving the Sacrament according to the Service Book, the first year twenty Pounds, the second year forty Pounds, the

the third year and every year after sixty Pounds.

3 *Jac.* 4.

To the Presenter out of the Recusants Goods forty Shillings forfeited, 3 *Jac.* 4.

For every Recusant sojourner and Servant, ten Pounds for every Month forfeited, 3 *Jac.* 4.

Two parts of Dower or Joynture of a Married Woman forfeited, 3 *Jac.* 5.

Coming to Court, an hundred Pounds forfeited, 3 *Jac.* 5.

For not Baptizing of Children according to the Service-Book publickly within a Month after their Birth, an hundred Pound forfeited, 3 *Jac.* 5.

For Marrying otherwise than by a Minister, an hundred Pounds forfeited, 3 *Jac.* 5.

For Burying out of the Church or Church-yard an hundred Pounds forfeited, 3 *Jac.* 5.

For sending Children beyond Seas without License, an hundred Pounds forfeited, 1 *Jac.* 4.

For maintaining a School-master not going to Church, or allowed to teach, for every Month ten Pounds forfeited, 23 *Elix.* 1. & 29 *Elix.* 6.

And forty Shillings *per Diem* forfeited by the School-master and Recusant that keeps him, 1 *Jac.* 4.

All Goods and Lands during Life, for Breach of Confinement forfeited; 23 *Elix.* 2. & 3 *Jac.* 5.

The like forfeiture for going or sending Children beyond the Seas to be Bred in Popery, 3 *Car.* 2.

For Residing within ten Miles of London, an hundred Pounds forfeited, 3 *Jac.* 5.

For Practising any Function expressed in the Statute of 3 *Jac.* 5. an hundred Pounds forfeited, 3 *Jac.* 5.

Disabled to Reverse Indictment for want of Form or other Defect, 3 *Jac.* 4.

Disabled from the Practise of several Functions, whereby to gain their Livings, *viz.* from practising Com.

C Common Law, Civil Law, or being a Steward, Attorney, Solicitor or Officer in any Court; from Practising Physick, or being Apothecary, and from Bearing any Office in Camp, Troop or Band of Soldiers, or in any Ship, Castle or Fortrefs, &c. 3. *Jac.* 5.

By the Wifes Recusancy, the Husband Disabled from Publick Office or Charge in the Common-Wealth, 3 *Jac.* 5.

By Marrying otherwise than the Church of *England* alloweth, the Husband disabled to be *Tenant by Courtſie*, the Wife disabled to have *Dower, Jointure, Free Banks*, or any part or *Portion* of her *Husbands Goods*, 3 *Jac.* 5.

Disabled to Sue or Proſecute Actions, to present to a Benefice, to be Executor, Administrator, or Guardian, 3 *Jac.* 5.

Children sent beyond the Seas without License, are disabled to take Benefit of Gift, Conveyance, Descent or Devise, 1 *Jac.* 4. & 3 *Jac.* 5.

C Notwithstanding these Forfeitures, Recusants are no less Subject to Ecclesiastical Sentences, 23 *Eliz.* 1. & 3 *Jac.* 45. [But Quære, Whether one Papist was *quâ Talis*, ever Excommunicated since the Kings happy Restauration, though many thousand Protestants have been :] Refusal to Receive the Sacrament, and take the Oaths of Supremacy and Allegiance, *Ipsa facto* disables from any publick Trust, 25 *Car.* 2. ca. 2.

Peers and Members of Parliament disabled to Sit, untill taking of Oaths of Allegiance and Supremacy, and declaring against Transubstantiation and the Idolatry of Rome, 30 *Car.* 2. Stat. 2.

Having thus Collected together divers of the most remarkable and advantageous of our *Laws*, whereby the *Liberties* of English-men are Guarded and Secured; since the best of *Laws* are but insignificant

significant Cyphers, if not Honestly put in Execution; and since in the Execution of our Laws *JURIES* are mainly concern'd, who if Ignorant of their Duty, or Corrupt, or Over-awed, and not daring to make use of that just power, wherewith the Law hath invested and intrusted them, may give up all those precious Priviledges, and subject us to the worst kind of slavery, under pretence of Law: therefore here in the last place, for the Information of my honest Country-men, the Freeholders of England, and others who in Corporations are daily call'd to this important Service, I shall subjoin a brief discourse of *Juries*.

S E C T. I.

Of the Advantages Englishmen enjoy by this Trial by Juries, above any other Nation under Heaven.

THIS one of the miserable Follies of depraved humane Nature, that it commonly sleights present Enjoyments, and rarely rates the good things it possesses at their true value, till 'tis deprived of them. This grand Priviledge of *Trials per pais*, by our Countrey, that is by *JURIES*, as it seems to have been as Ancient as the Government or first form of Policy in this Island; for it was not unknown to the ancient Britains (as appears by their Books and Monuments of Antiquity) Practised by the Saxons, [see King Ethelruds Laws in Lambert, p. 218. and Coke 1. part Instit. fo. 155.] and Confirmed since the Invasion of the Normans by *Magna Charta* as you have heard, and continual Usage; so it is a thing of the highest Moment and an essential Felicity to all English Subjects.

For

For look abroad in *France, Spain, Italy*, or indeed (almost) where you will, and observe the miserable Condition of the Inhabitants, either intirely subjected to the Arbitrary *Lusts of Tyrants*, who plunder, dismember or slay them, according as the humour takes them, and many times without the least provocation, meerly for sport, and to Gratifie a *savage Cruelty*: Or at best, you will behold them under such Laws as render their *Lives, Liberties and Estates* liable to be disposed of at the discretion of Strangers appointed their *Judges*, most times *mercenary*, and Creatures of *Prerogative*; sometimes malicious and oppressive, and too often partial and corrupt. Or suppose them never so just and upright, yet still has the Subject no security against *subornations* and the attacques of malicious, false and *unconscionable Witnesses*; yea when there is no *sufficient Evidence*, upon meer suspicions they are obnoxious to the *Tortures of the Rack*, which often make an Innocent man Confess himself Guilty meerly to get out of present pain: Or if he do with invincible Courage endure the *Question* (as they call those Torments) he is many times so spoiled in his Limbs as he scarce ever is his own man again.

Whereas such has been the goodness of God, and the prudent care of our Ancestors, that to our inestimable Happiness, we are born and live under a mild and Righteous Constitution, where all these mischiefs may be prevented, where none can be *Legally* condemned, either by the power of Superior Enemies, or the *rashness* or *Ill will* of any Judge, nor by the bold *Affirmations of profligate Evidence*: For by a fundamental Law in our Government, No mans Life (unless it be in Parliament, which is a Supream Court, and 'tis supposed will never do any man wrong) shall be touched for any Crime whatsoever, but upon being

found

found Guilty on two several Trials (for so may that of the Grand and Petty Jury be called) and the Judgment of twice Twelve men at least, all of his own Condition and Neighbourhood; and upon their Oaths, [*Coke 3. part of Instit. p. 40.*] That is to say, Twelve or more to find the Bill of Indictment against him, and Twelve others to give Judgment upon the General Issue of Not Guilty: All which Jurors must be honest, substantial, Impartial men, and being Neighbours of the party accused, or place where the supposed Fact was committed, cannot be presumed to be unacquainted either with the matters charged, the Prisoners course of Life, or the Credit of the Evidence: And all these must first be fully satisfied in their Consciences, that he is Guilty, and so unanimously pronounce him upon their Oaths, or else he cannot be condemned. For the Office and Power of these Juries is Judicial: They only are the Judges, from whose sentence the Indicted are to expect Life or Death; upon their Integrity and Understanding, the Lives of all that are brought into Judgment do ultimately depend; From their Verdict there lies no Appeal: By finding Guilty or Not Guilty, they do completely resolve both Law and Fact.

Judges are made by Prerogative, and many times heretofore they have been preferred by Corrupt Ministers of State, and may be so again in Time to come; and such advanced as would serve a present Turn, not always those of the most Integrity and Skill in the Laws: Their places are so Honourable and Profitable, and their Tenure so Ticklish, viz. durante beneplacito, merely during pleasure, that they lie under no small Temptations, which perhaps with some may be never the less unlikely to prevail, for their having generally been wont before to take Fug; They are concern'd.

cern'd in so many Causes, that they are the oftner
 subject to be tempt'd, and are so few that they
 may be the easier corrupted: They cannot be
 Challenged, and may be apt to think themselves
 above any Action, and thence be encouraged to
 strain a point now and then. The major part
 of them agreeing, is enough: they are never sworn
 at each particular Trial, nor ever at all but once,
 and that exceeding generally: I say all these things
 may possibly sometimes happen to Bias some
 Judges (for I intend not the least Reflection here-
 by on any of those *Honourable Persons* who at present
 deservedly supply our seats of Justice.) But nothing
 of that kind can reasonably happen to a *Jury*. For,
 1. They are return'd by a sworn Officer. 2. Must
 * be men of a clear Reputation, and competent Estate.
 3. Being Neighbours, they may know something
 of the business on their own knowledge. 4. Their
 Office is but a trouble, not accompanied with
 any great Honour, nor any profit at all. 5. They
 are all solemnly sworn to each particular Cause.
 6. The party may challenge 35 in case of Trea-
 * son, and 20 of them in Felony, without shewing
 any cause, and as many more as he can assign
 cause against. 7. Of the Grand Jury Twelve at
 least must joyn in the Verdict, and of the petty
 * Jury every man of the Twelve must consent upon
 his Oath, or else 'tis all nothing. And lastly, if
 they give a corrupt Verdict between Party and
 Party, they are liable to an *Attaint*. [But I do
 not find any Attaint lies in Criminal Causes, where
 the King is a Party.]

Now let any man of Sence consider, whether
 this method be not more proper for bolting out
 the Truth, for finding out the Guilty, and preserving
 the Innocent, than if the whole decision were left
 to the Examination of a Judge, or two or three,
 whose Interests, Passion, Haste, or Multiplicity of
 busi-

business may easily betray them into Error.

Deservedly therefore is this Priviledge of Tryal by *Juries* rank'd amongst the choicest of our Fundamental Laws, which whosoever shall goe about openly to *Suppress*, or craftily to *Undermine*, and render only a Formality, does *Ipsa Facto* attacque the Government, and brings in an Arbitrary Power, and is an Enemy and Traitor to his King and Countrey; For which reason *English Parliaments* have all along been most Zealous for preserving this great Jewel of Liberty, Trials by Juries, having no less than 38. several times since the *Norman* Conquest been established and Confirmed by the Legislative Power, no one Priviledge besides having been neer so often remembered in Parliament.

SECT. II.

What persons ought to be Jury-men, and how Qualified.

AS the Office of Juries is of such great Importance, so the Wisdom of our Law has provided that the same shall be supplied with Persons of Ability, Honesty, Integrity and Indifferency: for (as my Lord *Cook* saith, 1. part *Instit. Sect.* 234. fo. 155.) He that is of a Jury must be *Liber Homo*, that is, not only a *Free man*, and not Bond, but also one that hath such *Freedom of mind*, as he stands indifferent, as he stands unsworn. 2. He must be *Legalis*, and by the Law every Juror that is returned for the Trial of any Issue or Cause, ought to have three properties. 1. He ought to be dwelling most near to the place where the Question is moved. 2. He ought to be most
sufficient

sufficient both for understanding and Competency of Estate. 3. He ought to be *least Suspicious*, that is, to be indifferent as he stands Unsworn, and then he is accounted in Law, *Liber & Legalis homo*, otherwise he may be Challenged and not suffered to be Sworn; but a mans being Excommunicated, (as was said before) is no Barr to his being a Jury-man, much less his being a Dissenter or Non-frequenter of Church Ceremonies, if he be otherwise qualified with Estate and Understanding; for at that rate, if Popery should ever get uppermost, *No Protestant at all* would be capable of being a Jury-Man, because a Non-Conformist to Holy Church. Now if no Statute excludes Protestants unconvicted of any Crime, or Dissenters (*quâ tales*) to serve on Juries, I should think we ought to wait at least till an Act of Parliament be made to that purpose, before we deny them *Liberam Legem*; and to Act otherwise, in my silly Opinion seems not only unwarrantable, but a daring Usurpation of Legislative Power: In a word, Jurors must be free of and from all manner of Bondage, Obligations, Affections, Relations and Prejudices; they must be the *Peers* or Equals of the party they are to Try; they must be of full Age, 21 Years old or upwards, not *Outlaw'd*, never Attainted or Convicted of Treason, Felony, False Verdict, Perjury, or adjudged Infamous; they were anciently *all Knights*, as we read in *Glanvil* and *Bracton*, and they must still be persons of worth and repute; and as they are returned by a *Sworn Officer*, the Sheriff, so they of the petty Jury must be every one Sworn every several Trial by a particular Oath, the more to remind them of their Duty. Nay, it should seem in ancient times, tho' the Office and Duty were still the same as at this day, yet their Honour and Dignity were much greater. *The Mirror of Justices*, (a great part of which was Writ-

ten before the Conquest, and augmented by *Andrew Horn*, a Learned Lawyer in the time of King *Edw. the 2d.*) p. 209. [in the *French*, and 153. in the *English*] makes no scruple to call them *JUDGES*, *Judges Ordinaries sunt Sutores*; and *Dr. Comel* in his Interpreter, tells us, *Juries* were [anciently] *Associates and Assistants to the Judges* of the Court in a kind of Equality, whereas now a dayes, they attend them in great Humility: And cites the Customary of *Normandy*, and *Lambert*, as being of the same Sentiment. Nay, many Wise and Learned men have wondred, that since the Law has conferr'd such ample power on Jury-men, why they should have no kind of *mark of Honour or Distinction*, as liberty to Sit with their Hats on, from the time they are Sworn to the Delivery of their Verdict, or the like; For as the Custom is now a dayes, they sitting amongst the Croud with their Caps off, as well as the worst Male-factors they are to Trye, 'tis not easie knowing them from the rest of the Spectators. But this *Obiter*, I desire not to bring in Innovations, but only that English men may preserve their ancient undoubted Priviledges, to which purpose it will concern all that are liable to be Summoned to serve on Juries, heedfully to Inform themselves of their Duty and Office by Law, that so they may uprightly discharge the same to God and the King, and their fellow Subjects.

S E C T. III.

Of Grand Juries, their Duty, and the great Importance of their Office.

Juries are of two sorts. 1. The Grand Jury so called, both because it consists of a greater number than *Twelve*, as commonly 21, 19, 17. or the like, [but note they can make no Verdict or Presentment, unless *Twelve at least of them agree*, and then what they do, is Valid, tho' the rest do not Consent;] as also because generally they are of the greater quality, and likewise in respect of their Power, because the extent of their Office is more great and general, as extending to all Offences throughout the whole County for which they serve. 2. The *Petty Jury* (in Cases Criminal, called commonly the *Jury of Life and Death*) which alwaies consists of Twelve men, neither more nor less, who must every Man agree, or else it is no Verdict.

The Oath of a Grand Jury-man, as I find it Inserted in the Collection, Intituled The Book of Oaths, p. 206. is as follows.

“**Y**E shall truly inquire and due presentment
 “ make of all such things as you are charg-
 “ ed withall on the Kings behalf: The Kings
 “ Council, your own, and your Fellows, you shall
 “ well and truely keep, and in all other things
 “ the Truth present: So help you God, and by
 “ the Contents of this Book,

But

But according to modern practice, and as we find it Published in the account of the late Proceedings against the Right Honourable the Earl of *Shaftsbury*, said to be Publisht by his Majesties special Command, is expressed somewhat more largely.

The Oath Administred to the Grand Jury, as follows.

“**Y**OU shall diligently Inquire and true Presentment make of all such matters, Articles, and things as shall be given you in charge, as of all other matters and things as shall come to your knowledge touching this present Service, the Kings Council, your Fellows and your own, you shall keep secret; you shall present no person for Hatred or Malice, neither shall you leave any one unrepresented for Fear, Favour or Affection, for Lucre or Gain, or any hopes thereof, but in all things you shall present the truth, the whole Truth, and nothing but the Truth, to the best of your knowledge. So help you God.

The Office of a Grand Jury, or *Grand Inquest*, (for by both those Names 'tis promiscuously call'd) is principally concern'd in two things, *Presentments* and *Indictments*, the difference of which is thus: The *First* is when the Jury themselves of their own knowledge or Inquiry do take notice of some Crime, Offence or Nulance, to the injury of the Publick, which they think fit should be Punished or removed; and in Order thereunto do give the Court notice thereof in Writing briefly and without Form, only the Nature of the thing, and the Persons Name, and the Place. And this is call'd a *Presentment*, being the matter whereon to form an Indictment, from which the *Presentment* differs in

in these two respects. 1. In that is always *Originally* the Act of the Grand Jury. And, 2. That is not yet drawn up in *Form*; whereas Indictments are commonly drawn up either by the Order of the Court, or at the Instance of some Prosecutor, and are brought before, and delivered unto the Grand Jury, and the Witnesses Sworn attend them, who Examine the said Witnesses, and as they think fit, Return the Indictments indors'd either *Billa Vera*, [that is a true Bill,] or *Ignoramus*, [*We are Ignorant*] that is, we do not find the matter, or there does not appear to us such sufficient Grounds for the Accusation, *that the Persons Life and Reputation should be brought into question.

From whence it appears that the end of their Office is likewise two-fold. 1. To inquire after, and give notice of all Crimes, Offences, Nuisances, &c. in the County for which they Serve, which by reason of their Inhabitancy and Estates therein they are presumed to have best opportunity to discover, and to find Bills against Malefactors where there are good Grounds for the same, that so they may be brought to Trial if they are forth-coming, or may be proceeded against to the Outlawry if they are fled, for their said Offences. 2. To preserve the Innocent from the disgrace and hazards which ill men may design to bring them to, out of malice, or through subornation or other sinister ends; for so tender is the Law of the Reputation and Life of a man, that it will not suffer the one to be sullied, by the Parties holding up his hand at the Barr, and the other endanger'd by a Trial, untill first the Matter and Evidence against him have been scann'd, examined, and found by a Grand Jury upon their Oaths against him. Therefore you see by their Oaths, They are sworn not only to Inquire, but dili-

diligently to inquire, not to be negligent or slothful, nor to take things upon trust or hurry them over carelessly, but to weigh the Circumstances and sift the Witnesses, and search out the Truth of such Informations as come before them, and to reject the Indictment if it be not sufficiently proved; and if they have reasonable Suspicion of Malice, Subornation or wicked Designs against any mans Life or Estate in such as offer or come to Swear to the Bill of Indictment, they are bound by Law as well as in Conscience to use all diligence to discover the Villany; and if it appear to them (whereof they are the Legal Judges) to be a Conspiracy or malicious Conspiracy against the Accused, they are bound not only to reject such Bill of Indictment, but forthwith to Indict all the Conspirators with their Associates and Abettors; and that this is a main part of the Grand Juries Office, appears not only from Legal reason, but by an express Statute, viz. 25 Edw. 3, 4. and 42 Edw. 3, 3. which says, *That for preventing Mischiefs done by FALSE ACCUSERS, none should be put to answer, unless it be by Indictment or Presentment of good and lawful People of the same Neighbourhood where such Deeds be done, that is to say, by a Grand Jury.*

The Grounds upon which Grand Juries are to proceed in giving their Verdicts, are either,

1. From their own knowledge, and so they may find an Indictment against a person tho there be never a Witness at all to it, and a Petty Jury may in like manner find a person Guilty of a Felony or Murder whereof he stands Indicted, tho no Witnesses appear against him to prove it, and the reason thereof is, because the Juries being always of the Vicinage, the Law supposes they may know the matter of their own knowledge, and therefore in all such Cases when a Jury is charged with a Prisoner

Prisoner, and after the Indictment read, Witnesses fail to appear, the Court always speaks thus to the Jury: *Gentlemen, here is A. B. stands Indicted of such a Crime, but here's no Witnesses come against him, so that unless on your own knowledge you know him Guilty, you must Acquit him*; and certainly if the Juries knowledge of a mans Guilt, is enough to Condemn him, I see not why their personal knowledge of a Prisoners Innocency, or of the Witnesses Swearing falsely, should not be sufficient to Acquit him.

2. The other ground upon which the Grand Juries are to Proceed, is *Testimony of Witnesses*, and this is call'd *EVIDENCE*, because it ought to be such as may make the matter clear, manifest, plain and evident to the Jury; and of this Evidence the Jury are the proper and only Judges, therefore they ought (according to their Oath) diligently Inquire into the Quality, Repute, and Circumstances of the Witnesses, the likelyhood of what they Depose, and whether they do not Swear out of Malice, Subornation, Self-Interest, Combination, or some ill design; which to Discover, they will do well to Examine them apart, to note their Variations and Contradictions, to ask them sudden questions, and what questions are pertinent, not the Judges, but the Jury only can determine; for they may know how to make use of them towards Discovery of the Truth, tho the Judge does not, and 'tis They are upon their Oaths, not he, 'tis they must satisfy their own Consciences, the Judge has nothing to do to Intermeddle, he is bound by their Verdict: Let Witnesses be never so rampantly positive, yet if the Jarors have good and reasonable grounds not to believe them, they will, they must remain as Ignorant to the parties Crime as before: we find this expressly asserted for Law in our Books, as *Stiles's Reports*,

Reports, *L. 11.* tho' there be Witnesses who prove the Bill, yet the Grand Inquest is not bound to find it, if they see cause to the contrary, *to Coke L. 6.* The Judges use to determine *who* shall be Sworn, and what shall be produced as Evidence to the Jury, but the Jury are to consider what Credit or Authority the same is worthy of. If a Grand Jury are not Judges of Evidence, they signify nothing. If (as some would persuade us) because People Swear desperately, tho' they do not believe them, they shall be bound to find the Bill, then they signify nothing, and are no security to preserve Innocency. A lewd Woman once resolv'd to Indict the then Arch-bishop of Canterbury for a Rape, she Swore it no doubt very heartily, according to this new Doctrine of going according to Evidence, the Jury must presently have found the Bill, the Arch-bishop must have been Committed to Prison, Suspended from Ecclesiastical Jurisdiction, his Goods and Chattels throughout *England* Inventoried by the Sheriffs; would it, think you, in that Case have been a good Excuse for the Grand Jury, to have said, that tho' they believ'd in their Conscience the Baggage swore false, yet she Swearing it positively, they as so many Parish Clerks were but to say *Amen* to her Oath of the Fact, and to find *Billa Vera* against that eminent Prelate? And if the Jury be Judges of the Credibility of Evidence in this Case, and may go contrary to it, why I pray, may they not have the same Liberty where they find good Cause in others?

If an Indictment be laid against a man for Criminal words, said to be utter'd in a Colloquium, or Discourse, tho' the Witnesses roundly Swear all the express words in the Indictment, yet unless they will Relate and set forth the Substance of the whole talk, 'tis impossible the Jury should Judge

of the matter ; for the foregoing and subsequent words may render Expressions that are Innocent and Loyal, which taken to halves, may be rank Treason ; as if one should say, *To affirm the King has no more Right to the Crown of England than I have, (which is the Opinion of the Jesuits, of his Majesty, if once Excommunicated by the Pope) is detestable Treason : And two men at some distance, not well Hearing or Remembring, or Maliciously designing against his Life, should Swear——* That he said, *The King had no more Right to the Crown than he had : Now that the Man did utter these very words is true, but if you ask the Evidence the rest of the Colloquium, they shall tell you there was much more Discourse, but they cannot remember it ; what satisfaction is this to a Jury ? or would it not be hard for a Man to be put to hold up his Hand at the Bar under the frightful Charge of Treason in this Case ? Or if a Minister in his Sermon should Recite that of the Psalms, *The Fool hath said in his Heart there is no God : Jesuited Evidence now may come and Charge him with Blasphemy, and Swear that he said, There was no God : and ask them what Expressions besides he used, may excuse themselves and say, 'Tis a great while agoe, we cannot remember a whole Sermon, but this we all positively Swear, He said there was no God.**

The Inquiry of a Grand Jury should be suitable to their Title, a *Grand Inquiry* ; else instead of serving their Countrey, and presenting real Crimes, they may Oppress the Innocent, as in the Case of *Samuel Wright and John Good*, at a Sessions in the *Old Baily*, about *December 1681*. *Good* indicts *Wright* for Treasonable words, and Swore the words positively ; but after a Grand Enquiry, the Grand Jury found that *Wright* only spoke the words as of others, thus, *They say so and so——* and concluded with this—— *They*

are Rogues for saying it; and also Good at last Confessed that Wright was his Master, and Corrected him for Misdemeanours, and then to be Reveng'd he comes and Swears against him, which he Confessed he was Instigated to by one Powel; so the Grand Jury finding it to be but Malice, Return'd the Bill Ignoramus: whereas if they had not Examined him strictly, they had never discover'd the Intreigue, and the Master had Causelessly been brought to great Charge, Ignominy and Hazard.

The Judicious Dalton, p. 539 says well, No less care or Concern at all lies on the Grand Jury, than does on the Petty Jury: People may tell you, That you ought to find a Bill upon any probable Evidence, for 'tis but matter of Course, a Ceremony, a Business of Form, only an Accusation, the party is to come before another Jury, and there may make his Defence: But if this were all, to what purpose have we Grand Juries at all? why are the wisest, best men in a County (for such they are or should be) troubled? why are they so strictly Sworn? Do not Flatter your selves, you of the Grand Jury are as much upon your Oaths as the Petty Jury, and the Life of the man against whom the Bill is brought, is in your Hands: The Lord Cook 3. Instit. 33. plainly calls the Grand Jury-men all wilfully forsworn and Perjured, if they wrongfully find an Indictment; and if in such a Case the other Jury thro Ignorance, &c. should find the person Guilty too, you are Guilty of his Blood as well as they: but suppose he get off there, do you think it nothing to Accuse a man upon your Oaths, of horrid Crimes, your very doing of which puts him, tho never so Innocent, to Disgrace, Trouble, Damage, danger of Life, and makes him liable to Outlawry, Imprisonment, and every thing but Death it self, and that too for ought you know may wrongfully be occasion'd by it, your rash Verdict gaining Credit, and giving Authority to

another Jury ~~to~~ find him Guilty: for if the Petty Jury find a man Guilty never so unjustly, the Law suffers no At aint or other Punishment to lie against them, for this very reason, because another Jury, viz. the Grand Inquest as well as they, have found him Guilty. If a Grand Jury find a Bill wrongfully against a person, and it prove never so much to his damage, he has no Remedy: for being upon their Oaths, the Law will not suppose any malice. One of the Grand Jury cannot afterwards be of the petty Jury, and why? Because, says the Law, he has once already found the party Guilty, and if he should not again, he must perjure himself. From all which it appears, what a weight and stress the Law puts upon the Verdict of a Grand Jury; and 'tis remarkable too, that the Law directs them only to say, either, *Billa vera*, It is true, Or, *Ignoramus*, We know not; and never, *That it is not true*: Which shews, That if they be doubtfull, or not fully satisfied, The Indictment must be Endorsed not *Billa Vera*, We know 'tis true, but *Ignoramus*, We doubt it, *We do not know it*, We are not certain it be true. If they find a Bill where they ought not, they wound their own Consciences, and do an irreparable damage to the party; but where they do not find the Bill, there is no harm done to any body, for another Indictment may be brought when there is better Evidence.

SECT. IV.

That Juries are Judges of Law in some respects as well as Fact.

Amongst other devices to undermine the Rights and Power of Juries, and render them Insignificant, there has an opinion been ad-

advanced, That they are only Judges of Fact, and are not at all to Consider the Law; so that if a Person be Indicted for a Fact which really is no Crime in it self by Law, but is workt up by Words of form, as *Treasonably, Seditiously, &c.* if the Fact be but proved to be done, though the said wicked Circumstances do not appear, they shall be supplied by the Law, which you are not to take notice of, but find the Bill, or bring in the Person Guilty, and leave the Consideration of the Case in Law to the Judges, whose business it is. — Thus some people argue, but this is an apparent *Trapp*, at once to Perjure Ignorant Juries, and render them so far from being of good use, as to be only Tools of Oppression, to Ruine and Murder their Innocent Neighbours with the greater Formality: For though it be true, that matter of Fact is the most common and proper Object of a Juries determination, and matter of Law that of the Judges, yet as Law arises out of, and is complicated with Fact, it cannot but fall under the Juries Consideration. *Littleton, Sect. 368.* teaches us, That the Jury may at their Election either take upon them the Knowledge of the Law, and Determine both the Fact and Law themselves, or else find the matter specially, and leave it to the Judges: 'Tis by applying matter of Fact and Law together, and from their due Consideration of, and right Judgment upon both, that a Jury brings forth their Verdict. Do we not see in most General Issues, as upon Not Guilty pleaded in Trespass, breach of the Peace, or Felony, though it be matter in Law, whether the party be a Trespasser, a breaker of the Peace, or a Felon, yet the Jury do not find the Fact of the Case by it self, leaving the Law to the Court, but find the party Guilty or Not Guilty generally; so that though they Answer not to the Question singly, what is Law, yet they determine the Law in all matters where Issue is Joined. Is it not every dayes practice,

when persons are Indicted for Murthier, the Jury does not only find them Guilty or Not Guilty, but many times upon hearing and weighing of Circumstances, brings them in either Guilty of the Murder, or else only of Man-slaughter, per misadventure, or se defendendo, as they see Cause? Besides, as Juries have ever been vested with such Power by Law, so to exclude them from, or Disseize of the same, were utterly to Defeat the End of their Institution. For then if a person should be Indicted for doing any Common Innocent Act, if it be but Cloathed and disguised in the Indictment with the name of Treason, or some other High Crime, and proved by Witnesses to have been done by him, the Jury though satisfied in Conscience, that the Fact is not any such offence as 'tis called, yet because (according to this fond Opinion) they have no power to Judge of Law, and the Fact charged is fully proved, they should at this Rate be bound to find him Guilty: And being so found, the Judge may pronounce Sentence against him, for he finds him a Convicted Traitor, &c. by his Peers: And so Juries should be made meer Properties to do the Drudgery and bear the blame of unreasonable Prosecutions. But all this is absur'd, and abhorr'd by the Wisdom, Justice and Mercy of our Laws.

In every Indictment, Information, &c. there are certain words of Course, called matter of form, as *Maliciously, Seditiously, with such and such an Intention, &c.* And these sometimes are raised by a Just and reasonable Implication in Law, and sometimes are thrust in meerly to raise a pretence or Colour of Crime where there is really none. So that every Jury-man ought well to understand this Distinction, where the Act is naked

naked matter of Fact charged, is in it self a Crime or offence against Law; as killing of a Man, Levying of War against the King, &c. there the Law does in pleadings require, and will supply those words; and if the Jury do find, and are satisfied, That the substance of the Charge is such a Crime, and the person Guilty thereof, they are bound to find it, though no direct proof be made of those Circumstantial. But where the Act or matter of Fact is in it self Innocent or Indifferent, there the purport of these Words (as that it was done *maliciously*, or with *such* or *such a design*) is necessary to be proved: For else there is no Crime, and consequently no fit matter to be put to Trial. In which Case, the Grand Jury is bound in Conscience and Law to return an *Ignoramus*, and a Petty Jury *Not Guilty*.

S E C T. V.

That Juries are not finable, or any way to be punished under pretence of going contrary to Evidence, or against the Judges Directions.

Much of what we have said of Grand Juries, is also applicable to Petty Juries, so that we need not repeat it, only must Answer one Objection. Some Jury-men may be apt to say,——If we do not find according to Evidence, though we have reason to suspect the truth of what they Swear, or if we do not find as the Judge directs, we may come into trouble, the Judge may Fine us, &c.——I Answer, this is a vain fear. No

Judge dare offer any such thing: you are the proper Judges of the matters before you, and your Souls are at stake, you ought to Act freely, and are not bound, though the Court demand it, to give the Reasons why you bring it in thus, or thus; for you of the Grand-Jury are sworn to the Contrary, viz. To keep secret your fellows Counsel and your own; and you of the Petty Jury are no way obliged to declare your motives, it may not be convenient. 'Tis a notable Case before the Chief Justice *Anderson* in *Q. Eliz.* dayes. A Man was Arraigned for murder, the Evidence was so strong that 11. of the Jury were presently for finding him Guilty, the 12th man refused, and kept them so long that they were ready to starve, and at last made them comply with him, and bring in the Prisoner not Guilty: The Judge, who had several times admonish'd this Jury-man to join with his Fellows, being surprized, sent for him, discourf-
ed him privately; to whom upon promise of Indemp-
nity, he at last own'd that he himself was the man that did the Murder, and the Prisoner was Innocent, and that he was resolv'd not to adde Perjury and a second Murder to the first. — But to satisfie you that a Jury is no way punishable for going according to their Conscience, though against seeming Evidence, and the Reasons why they are and ought not to be question'd for the same, I shall here Recite an Adjudg-
ed Case, that of *Bushel*, in the two and twentieth year of His Majesty, Reported by the Learned Sir *John Vaughan*, whose Book is Licensed by the present Lord Chancellor, the Lord Chief Justice *North*, and all the Judges then in *England*: the said Case begins fol. 135. and continues 150. The whole well worth Reading: but I shall only Select Certain Passages. —

The Case was this:

Bushel and others of a Jury having at a Sessions not found Pen and Mead (Two Quakers) Guilty of a Trepass, Contempt, Unlawful Assembly and Tumult, where-
of

of they had been Indicted, were fined forty pound a man, and Committed till they should pay it. Bushel brings his Habeas Corpus, and upon the Return it appeared he was Committed, — For that contrary to Law, and against full and Clear Evidence openly given in Court, and against the Directions of the Court in matter of Law, they had Acquitted the said W. P. and W. M. to the great Obstruction of Justice, &c. Which upon solemn Argument was by the Judges Resolved, to be an Insufficient Cause of fining and committing them, and they were discharged, and afterwards brought Actions for their Damage. The Reasons of which Judgment are reported by Judge Vaughan, and amongst them he Useth these that follow, which I shall give you in his own words.

Fol. 140. One fault in the Return is, That the Jurors are not said to have Acquitted the persons Indicted, against full and manifest Evidence, Corruptly, and Knowing the said Evidence to be full and manifest against the Persons Indicted; For how manifest soever the Evidence was, if it were not manifest to them, and that they Believed it such, it was not a Finable fault, nor Deserving Imprisonment; Upon which Difference the Law of punishing Jurors for false Verdicts, principally Depen^ds,

And Fol. 141. I would know, whether any thing be more Common, than for two men, Students, Barristers, or Judges, to deduce Contrary and opposite Conclusions out of the same Case in Law? And is there any Difference that two men should Infer distinct Conclusions from the same Testimony? is any thing more known, than that the same Author and place in that Author, is forceably urg'd to maintain contrary Conclusions, and the Decision hard which is in the Right? is any thing more frequent in the controversies of Religion, than to press the same Texts for Opposite Tenets? How then comes it to pass, that two persons may not apprehend with Reason and Honesty, what a Witness, or many say, to prove in the Understanding of one plainly one thing, but in the Apprehension of the other clearly the contrary thing? must therefore one of these Me-
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rit Fine and Imprisonment, because he doth that which he cannot otherwise do, preserving his Oath and Integrity? And this is often the Case of the Judge and the Jury.

And Fol. 142. I conclude therefore, That this Return, charging the Prisoners to have Acquitted P. and M. against full and manifest Evidence first, and next without saying that they did know and Believe that Evidence to be full and Manifest against the Indicted persons, is no Cause of Fine and Imprisonment.

In the Margent of that Fol. 142. it is thus Noted: Of this Mind were ten Judges of Eleven; the Chief Baron Turner gave no Opinion, because not at the Argument.

And in the same fol. 142. he saith, The Verdict of a Jury, and Evidence of a Witness, are very Different things, in the Truth and Falshood of them: a Witness swears but to what he hath heard or seen generally, or more largely, to what hath fallen under his Senses: But a Jury-man swears to what he can Inferred and conclude from the Testimony of such Witnesses, by the Act and force of his Understanding, to be the Fact Inquired after; which differs nothing in Reason, though much in the Punishment, from what a Judge, out of Various Cases considered by him, Infers to be the Law in the question before him.

If the meaning of these Words, finding against the Direction of the Court, in matter of Law, be, That if the Judge having heard the Evidence given in Court (for he knows no other) shall tell the Jury upon this Evidence, the Law is for the Plaintiff, or for the Defendant, and you are under the pain of Fine and Imprisonment to find accordingly; and the Jury ought of duty so to do; then every man sees, that the Jury is but a troublesome delay, great Charge, and no use in determining Right and Wrong; and therefore the Tryals by them may be better Abolished than continued: which were a strange new found Conclusion, after a Tryal so Celebrated for many hundred Years.

It is true, if the Jury were to have no other Evidence for the Fact, but what is Deposed in Court, the Judge

Judge might know their Evidence, and the Fact from it, equally as they, and so direct what the Law were in the Case; though even then the Judge and Jury might honestly differ in the Result from the Evidence, as well as two Judges may, which often happens; but the Evidence which the Jury have of the Fact, is much otherwise than that. For,

1. Being Returned of the Vicinage where the Cause of Action ariseth, the Law supposeth them thence to have sufficient Knowledge to Try the matter in Issue (and so they must) though no Evidence were given on either side in Court; but to this Evidence the Judge is a stranger.

2. They may have Evidence from their own Personal Knowledge, by which they may be assured, and sometimes are, that what is deposed in Court is absolutely false: but to this the Judge is a stranger, and he knows no more of the Fact than he hath Learned in Court, and perhaps by false Depositions, and consequently knows nothing.

3. The Jury may know the Witnesses to be Stigmatized, and Infamous, which may be unknown to the parties, and consequently to the Court.

Fol. 148. To what end is the Jury to be Returned out of the Vicinage, where the Cause of Action ariseth? to what end must Hundredors be of the Jury, whom the Law supposeth to have nearer knowledge of the Fact, than those of the Vicinage in General? to what end are they Challenged so scrupulously to the Array and Poll? to what end must they have such a certain Free-hold, and be Probi & Legales homines, and not of Affinity with the party concern'd? to what end must they have in many Cases the View for Exacter Information chiefly? to what end must they undergo the Punishment of the Villanous Judgment, if after all this they Implicitly must give a Verdict by the Dictates and Authority of another Man, under Pains of Fines and Imprisonment, when Sworn to do it according to the best of their own Knowledge?

A man cannot see by anothers Eye, nor hear by anothers Ear; no more can a man conclude or Infer the thing
to

to be Resolved by anothers Understanding or Reasoning; and though the Verdict be right the Jury give, yet they being not assured that it is so from their own Understanding, are Forsworn, at least in foro Conscientiæ.

Fol. 149. And it is Absurd to Fine a Jury for finding against their Evidence, when the Judge knows but part of it; for the better and greater part of the Evidence may be wholly unknown to him, and this may happen in most Cases, and often doth.

Thus far Judge Vaughan, whose words I have faithfully Recited, and with it shall conclude this Subject; Recommending those that would be further satisfied in the Law touching the Power and Duty of Juries, to those two Excellent, Learned Treatises lately published, the one Intituled, *A Guide* **to English Juries, &c.* to be Sold by Mr. Cockeril at the Three Legs over against the Stocks-Market; the other, *The Security of English-mens Lives, or the Trust,* **Power and Duty of the Grand Juries of England,* Printed for Benj. Alsop in the Poultry; both which are extreamly well worthy of every English mans Perusal, that is liable to be call'd to that Office.

And now I shall take Leave of the Reader, who I hope will join with me and all English Protestants in this Prayer:

That Almighty God would preserve our Religion, put a stop to the Growth of Popery, Confound all their Plots, Protect our present Gracious King, Defend us both from a Forreign Yoak and Domestick Slavery, but continue to us the Enjoyment of our good old Laws, Liberties and Priviledges, and bring all those to exemplary Justice that have or shall dare attempt to Subvert, Diminish or Undermine them. Amen.

FINIS.

